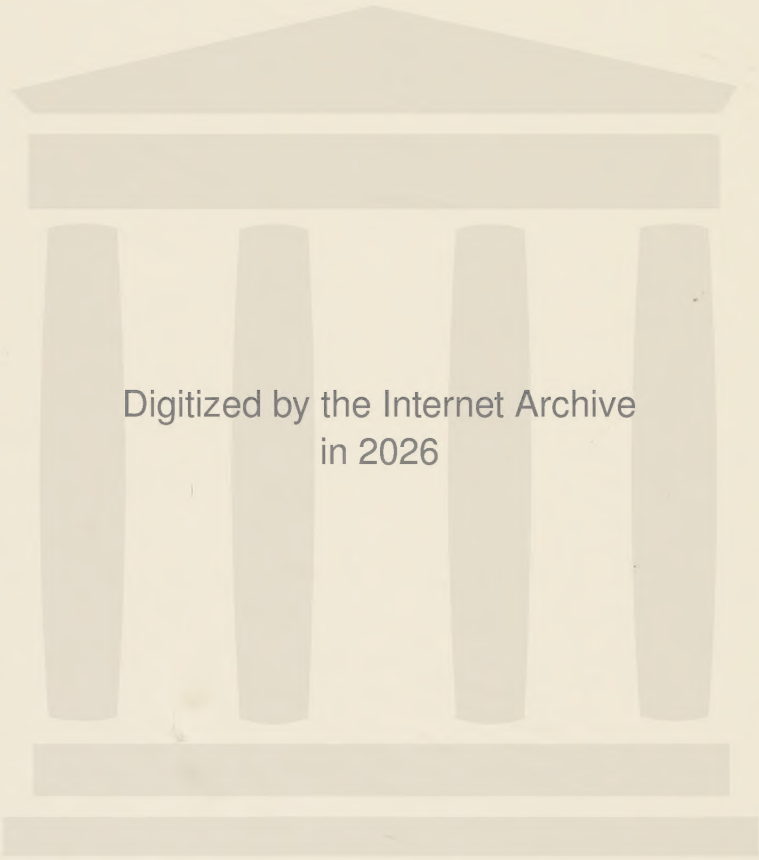

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A SUPPLEMENT

TO THE LAST EDITION OF THE

CONCISE, PRACTICAL ABRIDGMENT

OF THE

Common and Statute Law,

AS AT PRESENT ADMINISTERED,

COMPRISING

THE DECISIONS, STATUTES, AND RULES OF COURT,

FROM H.T. 1863 TO H.T. 1870,

INCLUDING

A CONDENSED ALPHABETICAL SYNOPSIS OF THE BANKRUPTCY, THE IMPRISONMENT FOR DEBT, REPEAL ACTS, AND RULES OF COURT OF 1869–70.

Designed as a continuation of the Abridgment, or as a Separate Work.

COMPRISING, IN THE MOST CONDENSED TERMS, UNDER AN ALPHABETICAL ARRANGEMENT,

REFERENCES TO ALL THAT IS OF PRACTICAL UTILITY IN THE REPORTS, STATUTES, AND RULES OF COURT FOR THE LAST SEVEN YEARS,

AS A MANUAL FOR THE CIRCUIT, SITTINGS AT NISI PRIUS, SUPERIOR, COUNTY, AND BANKRUPTCY COURTS,

AND AS AN ADDENDUM TO THE MODERN TEXT WORKS AND DIGESTS.

BY CHARLES PETERSDORFF, SERJEANT-AT-LAW,

ONE OF THE JUDGES OF THE COUNTY COURTS.

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ADVERTISEMENT.

The ensuing pages comprise a condensed manual of all that is essential for the use of the Practitioners and Students contained in the Reports, the Statutes and Rules of Court, from Hilary Term, 1863, to Hilary Term, 1870, confining the references to the cases that embody practical guiding information, excluding all decisions depending upon complex details and special circumstances, and supplying no instructive rule nor propounding any principle capable of general application.

Every effort has been made to render information promptly accessible by placing it under heads, titles, and references that would most readily occur to the inquirer.

The work, from its alphabetical arrangement, might be made extremely useful, not only as a supplement to the original Abridgment and as a separate compendium of recent law, but as an Addendum to most of the modern Treatises and Digests.

A condensed Alphabetical Synopsis of the Bankruptcy Act, the Debtors' Act, the Bankruptcy Repeal and Insolvent Debtors' Act, 1869, and General Rules for regulating the Practice and Procedure in Bankruptcy, and under the other Acts, 1869, is given at p. 447.

C. P.

February 1870.

Supplement

TO THE

CONCISE PRACTICAL ABRIDGMENT OF THE COMMON AND STATUTE LAW,

COMPRISING THE CASES, STATUTES, AND RULES OF COURT, FROM H. T. 1863 TO H. T. 1870.

ABANDONMENT. *See* Insurance.
of Invention. *See* Patent.
of Premises. *See* Easement; Ejectment.
of Proceedings.[1] 1 Ab. 3.
of Railways. *See* 13 & 14 Vic. c. 83, extended by 30 & 31 Vic. c. 126, s. 31, and 31 & 32 id. c. 79, 119; 32 & 33 id. c. 114.

ABATEMENT of Nuisances. 1 Ab.

I. PUBLIC NUISANCE MAY BE ABATED.

(A) *By Board of Health.* *See* Public Health.
(B) *By Town Council or other Public Bodies.* *See* Public Health.
(C) *By Private Individuals.* *See* Nuisances; Public Health.

II. PRIVATE NUISANCES MAY BE ABATED BY PARTY PREJUDICED.[2] 1 Ab. 5.

ABATEMENT of Suit by Death.[3] 1 Ab. 6.

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[1] A plaintiff may do this without payment of costs, where no costs have been incurred by the adverse party. 1 Ab. 3. 4. But a rule, once obtained, cannot be abandoned by the party moving, without leave of the court. *Simpson, In re*, 17 L. T. 617.

[2] One who has a right to abate a nuisance to his own soil, on the land of another person, should choose a mode of doing it which will cause the least avoidable injury to such person. *Roberts v. Rose*, 3 H. & C. 162; 33 L. J. Exch. 241; 35 L. J. 62; 18 L. T. N. S. 471; 1 L. R. C. P. 82. Although, in exercising this self-redress, a man may be justified in interfering (so far as is necessary) with the property of the wrong-doer, he is not in interfering with the property of innocent third persons or the public. Before entering on the land of others to abate a nuisance, it is advisable to give the occupier notice, and an opportunity of removing the cause of complaint, especially where it is not an act of commission, but arising from omission. *Davies v. Williams*, 16 Q. B. 556; Addison on Torts, 162. *Earl of Lonsdale v. Nelson*, 2 B. & C. 311; and see *Jones v. Williams*, 11 M. & W. 181. Against a mere continuer of a nuisance such notice is indispensable. *Penruddock's case*, 5 Rep. 100, 101. *See* also Willes, 583; R. & M. 189.

[3] The death of a plaintiff in an action for a personal injury after verdict does not abate the proceedings. *Kramer v. Waymark*, 4 H. & C. 427; 12 Jur. 395; 1 L. R. Ex. 241; 14 L. T. 348. The 139th section of the Procedure Act of 1852 applies whether the cause of action would have survived to the personal representatives or not. The death of a plaintiff in a testamentary suit must be suggested on the record before a decree can be made. *Jones v. Jones*, 37 L. J. P. & M. 43. In an administration suit, by two ordinary legatees, the death of one abates the suit. 13 W. R. 400.

ABDUCTION.[1] 1 Ab. 44; stat 9 Geo. 4, c. 31, s. 19; 24 & 25 Vic. c. 100, s. 3. *See* Assault; Rape.

ABODE and Occupation of Plaintiffs.[2] 1 Ab. 54.

ABORTION,[3] **and wilfully causing Miscarriage.** 1 Ab. 55; stat. 24 & 25 Vict. c. 100, s. 5.

ABROAD, Serving Process. *See* Writ of Summons, and Althusers *v.* Malguexo, 3 L. R. Q. B. 320; 10 L. T. 323.

ABSCONDING Debtors Act.[4] 1 Ab. 58.

ABSENTING. *See* Bankrupt.

ABSTRACT of Title. 1 Ab. 63.

ABUTTALS. 1 Ab. 63. *See* Boundaries; Trespass.

ACCESSARIES. *See* Aiders and Abettors.

ACCEPTING, not Goods Sold. *See* Goods; Sale.

ACCEPTANCE. *See* Bills and Notes.

ACCIDENT. 1 Ab. 82. Party not liable for inevitable.[5] *See* also Animals; Master and Servant; Navigation Insurance; Negligence; Compensation to families and persons killed by, 9 & 10 Vic. c. 93; 27 & 28 id. c. 95. Campbell's, Lord, Act, Post Negligence.

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[1] A. was indicted, under 24 & 25 Vict. c. 100, s. 3, for fraudulently alluring C. out of the possession of her mother and stepfather, the latter having the lawful care of her; and B. with being an accessory before the fact. C. had been sent by her mother to live with her grandmother:—*Held*, that averments that the girl was in the possession and under the care of her stepfather might be rejected as surplusage. *Reg. v. Burrell*, 34 L. J. M. C. 654; 1 L. & C. C. C. 354. But there must be evidence that the alluring was fraudulent, or that the girl was taken out of her mother's possession. See *R. v. Fraser*, 8 Cox, C. C. 446.

If a man, by promises to a girl under sixteen, induces her to leave her parents, and go to live with him, he is guilty of criminal abduction, although he is not otherwise actually a party to her act in leaving. *Reg. v. Robb*, 4 F. & F. 59. A man dealing with an unmarried girl does so at his peril, as to her being under sixteen. *Reg. v. Olifier*, 10 C. C. C. 102; *R. v. Timmens*, 30 L. J. M. C. 45.

[2] Under 15 & 16 Vic. c. 76, s. 7, the court will oblige plaintiff's attorney to disclose the place of abode of plaintiff, although the object of the inquiry may be to enable a defendant to arrest him on an attachment. Semble, it would be otherwise if the object of the inquiry was to enable defendant to arrest plaintiff on a criminal charge. *Cox v. Bockett*, 18 C. B. N. S. 239; 34 L. J. C. P. 125. The order ought to state a specific time, within which the information is to be given. *Malpage v. Mudd*, 3 H. & N. 246; 27 L. J. 367.

[3] The prisoner was induced by A., who was pregnant by him, to get for her a dose of corrosive sublimate, for the purpose of producing abortion. A. took it in his absence. The jury found that the prisoner did not administer the poison to her, nor cause her to take it:—*Held*, that, even if the woman were *felo de se*, the prisoner could not be convicted of murder. *Reg. v. Fretwell*, 1 L. & C. C. C. 161; 31 L. J. M. C. 145.

Upon an indictment, for supplying a certain noxious thing, with intent to procure miscarriage, it is necessary to prove that the thing supplied *is noxious*. *Reg. v. Isaacs*, 1 L. & C. C. C. 220; 9 Cox, C. C. 228; 9 Jur. N. S. 212; 32 L. J. M. C. 52. But it is not essential that the intention of employing it should exist in the mind of any other person than the person furnishing it. *Reg. v. Hillman*, 33 L. J. M. C. 60; 1 L. & C. C. 343; 12 W. R. 111; 9 L. T. N. S. 518.

[4] The 14 & 15 Vic. c. 52 is repealed by 32 & 33 Vic. c. 83; and sect. 6, 32 & 33 id. c. 62, gives power to arrest a defendant about to quit England in any action in any of the superior courts before final judgment, upon proof on oath that the plaintiff has good cause of action to the amount of fifty pounds or upwards, and that there is reasonable ground for believing the defendant is going to quit England, and that his absence will "materially prejudice the plaintiff in the prosecution of his action."

A party, by neglecting to apply for a capias within seven days after the date of the warrant, did not lose the right of causing a capias to be issued afterwards upon the same materials as those on which he obtained the warrant. *Williams v. Gibbon*, 4 B. & S. 617; 9 L. T. N. S. 328; 33 L. J. Q. B. 33. See *Masters v. Johnson*, 8 Ex. 63. Application for discharge under s. 8, 14 & 15 Vic. need not have been to the judge granting the warrant, though it should be to the one in whose district the defendant resides. *Worden v. Stone, supra*. As to discharging a bankrupt, see *Steward v. Waugh*, 33 L. J. Q. B. 86.

[5] An accident may be of such a character

ACCOMMODATION. *See* Bills and Notes.

ACCOMPLICES. *See* Aiders and Abettors.

ACCORD and Satisfaction.[1] 1 Ab. 88; *See* Arbitration Bills of Exchange; Composition with Creditors; Payment; Release.

I. Must be Complete and Executed. 1 Ab. p. 89.

II. Must be Certain. 1 Ab. p. 91.

III. Must be with Satisfaction.[2] 1 Ab. p. 91.

IV. The Chattel given and accepted in Satisfaction must be of some Value in Law, p. 93.

V. The Acceptance must be an Act of the Will. 1 Ab. p. 94.

VI. Satisfaction must not be with a Stranger. 1 Ab. p. 94.

VII. Satisfaction with one of several Enures to all. 1 Ab. p. 96.

VIII. Payment of less Sum no Satisfaction of Greater. 1 Ab. p. 97.

(A) *Unless in Discharge of an unliquidated Claim*, 1 Ab. p. 98.

(B) *Or paid by a third person.* 1 Ab. p. 98.

IX. Payment of agreed Balance on unsettled Cross Demands is sufficient: *aliter* where no Cross demands. 1 Ab. p. 98.

X. Effect of Substituting one Security for another (not available unless of higher degree or negotiable). 1 Ab. p. 96.[3]

XI. May be pleaded in an Action for Libel.[4]

XII. Must be Specially pleaded. 1 Ab. p. 104.[5]

ACCOUNT, Stated.[6] 1 Ab. 116.

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that negligence may be presumed, as where goods fall from a warehouse, on to a public highway. *Byrne v. Boodle*, 33 L. J. Ex. 13; 10 Jur. N. S. 1107. To sustain the defence of accident, the circumstances must show its inevitability. *Burne v. Cork & Brandon Railway Company*, 13 Ir. C. L. Rep. 43 Ex. *Scott v. London Dock Company*, 34 L. J. Ex. 220, 13 L. J. N. S. 948; and not capable of being prevented by ordinary skill and diligence. *The Thomas Powell*, 14 L. T. Adm. 603. It is stated as a rule that a man is not liable in an action of trespass or on the case, for an unintentional consequential injury resulting from a lawful act, where neither negligence nor folly can be imputed to him; and there is no reason for a different rule or principle where the injury is immediate and direct. *Morris v. Platt*, 1 U. S. L. J. N. S. 306, 329.

[1] The expression, "accord and satisfaction," technically imports an agreement to accept, and the receipt of some equivalent for an antecedent vested right. The accord is the contract; the satisfaction, the substituted equivalent.

[2] The payment at once of part of a plaintiff's demand and the deposit by agreement of the residue with a third party in trust for the plaintiff, pending the adjustment of the disputed differences suffices to support a special plea of satisfaction. *Page v. Meek*, 3 B. & S. 259. So acceptance of a less amount than the asserted claim is sufficient if demand unliquidated, or on a quantum meruit otherwise if the debt be a liquidated demand. *Cooper v. Parker*, 15 C. B. 822; 29 L. J. C. P. 68.

[3] Three persons were owners of some property, and they employed the plaintiff to let it for them, and two of them executed a mortgage-deed securing to him the amount of his bill; in an action against the three for the amount of the bill:—*Held*, that the action would lie, as the specialty liability not being co-extensive with the simple contract liability, the latter was not merged in the former. *Sharp v. Gibbs*, 12 W. R. 711, C. P.

[4] The acceptance of a valid executory agreement may be a satisfaction in law, at all events, it is so when fulfilled. *Hall v. Flochlon*, 14 Q. B. 380. Hence, a stipulation that apologies on each side in the public press shall be accepted is a good defence. *Boosey v. Wood*, 34 L. J. Ex. 65; 11 L. T. N. S. 639; 3 H. & C. 484; see *Lavory v. Turley*, 30 L. J. Ex. 49. As to setting aside alleged agreements of accord in equity, see Stewart *v.* Great Western R. W., 13 L. T., N. S 79.

[5] *Horsley v. Cox*, 15 L. T.; N. S. 391.

[6] It is no objection to an account stated,

ACCOUNTANT. The scale of charges allowed by the general order in bankruptcy for an accountant and his clerks is adopted in taking accounts in chambers. *Meymott v. Meymott*, 33 Beav. 590.

ACCOUNT Sales.[1]

ACCOUNTS of Parishes and Unions. *See* 11 & 12 Vic. c. 91.

ACKNOWLEDGMENT by Married Women. *See* 3 & 4 Will. 4, c. 74; 17 & 18 Vic. s. 75. Husband and Wife.

of Deed. *See* Deed; Infant; Lease.

of Debt. *See* Limitations Stat.

ACQUIESCENCE.[2] 1 Ab. 128. *See* Admissions, Confessions, Estoppel.

ACT of Parliament. *See* Stat.

ACTION, Notice of. *See* Notice of Action.

ACTION, General Principles.[3] 1 Ab. 132.

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that the items relate to the realty only. *Laycock v Pickles*, 4 B. & S. 497; 10 Jur. N.S. 336; 33 L. J. Q. B. 43; 9 L. T. N. S. 378. A confirmation of an account obtained by pecuniary pressure is not binding in equity. *Croft v. Graham*, 9 L.T. N.S. 112. And a claim, void by reason of an illegality or immorality in the consideration, cannot be relied on in support of a count upon an account stated. *Kennedy v. Broun*, 13 C. B. N. S. 677; 9 Jur. N. S. 119; 32 L. J. C. P. 137; 11 W. R. 284; 7 L. T. N. S. 626. Nor is a promise by a client to pay money to a barrister for his advocacy, whether made before, during, or after the litigation, sufficient to support an account stated. *Ib.* A. having agreed to become surety for the repayment by B. of an advance of money made by C. to B. the following memorandum was signed by A. and B. and given to C.: "We jointly and severally owe you £60." *Held*, evidence of money lent to and account stated as against A. and B. *Buck v. Hurst*, 12 Jur. N. S. 704; 1 L. R. C. P. 297. A collateral liability will not sustain an account stated. 14 W. R. 699. *Wilson v. Marshall*, 15, Ir. Com. L. R. 466. But an I. O. U. is evidence of an account stated with the person who produces it, though not named in it. *Fesenmayer v. Adcock*, 16, M. & W. 449. In taking accounts as between merchants or traders, entries in the books of one party of sums received by him to the credit of the other, are good evidence in favour of the latter. On the other hand, entries in the same books, of payments made by the one on account of the other, are not conclusive, but must be proved by the former in the usual way. *Reeve v. Whitmore*, 2 Drew & Sm. 446; 11 Jur. N. S. 722; 12 L. T. N. S. 724. Where a defendant sets up by his answer a settled account, in which no specific errors are charged by the bill, the bill is properly dismissed. *Parkinson v. Hanbury*, 13 W. R. L. J. 331. See *Hunter v. Belcher*, 2 De G. J. & S. 194.

[1] It seems in the case of consignments to a merchant abroad for sale the account sales are not *primâ facie* evidence of the amount realised, throwing it upon the consignor to "surcharge and falsify." *Smith v. Blakey*, 1 L. R. 2 Q. B. 326; 36 L. J. 156.

[2] Acquiescence without full or sufficient knowledge of the circumstances in respect of which such acquiescence is alleged cannot be of any avail. *Prideaux v. Lonsdale*, 32 L. J. Ch. 317. *See Mitchell v. Stewart*, 1 L. R. Eq. 541. *Ramsden v. Dyson*, 1 H. L. 129. In a breach of trust, see 37 L. J., Ch. 270, by a company in a transaction *ultra vires*, 6 L. R. Eq. 91.

An equitable defence to an action at law for injuring plaintiff's water-course, on the ground of the acquiescence of plaintiff in the works must allege and show that the plaintiff by his conduct intended that the defendant should believe that he acquiesced in or encouraged the execution of the works. *Smith v. Hayes*, Ir. Rep. 1 Com. Law, 333.

[3] One who is no party to an agreement cannot sue in respect of the breach of duty arising out of the contract. *Alton v. Midland Railway Company*, 19 C. B. N. S. 213; 11 Jur. N. S. 672; 34 L. J. C. P. 292. Therefore where a deed is made *inter partes*, no one who is not expressed to be a party can sue on a covenant contained in it; and this is not a mere rule of construction, but a rule of positive law. *Chesterfield and Midland Silkstone Colliery Company v. Hawkins*, 3 H. & C. 667; 34 L. J. 982.

Where one of two contracting parties so conducts himself as to hinder the performance of the contract by the other, or to subject the latter to an action at the suit of some third person if he duly perform

ADMINISTRATION. *See* Executors and Administrators.

I. By whom Administration may be granted. 1 Ab. 165. *See* Cootes and Tristram's "Probate Practice," Jebb's "Probate Act," &c.

II. To whom Administration may be granted.

(A) *To the Next of Kin*, p. 6.
(B) *To Widows—Husband—Married Women*, p. 6.
(C) *To Legatees, Appointees, or Agents*, p. 6.
(D) *With Will annexed and according to Tenor*, p. 79.
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(F) *In case of Foreign Domicile of Deceased or Person dying Abroad*, p. 7.
(G) *Grant to Creditors or Persons interested*, p. 7.
(H) *Administration* pendente lite, p. 8.
(I) *Administration limited to part of the Estate*, p. 8.

III. Revocation of Letters of Administration, p. .8

IV. Of the Administration Bond, p. 8.

V. Practices in granting Letters of Administration, p. 9.

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his part of the contract, no action will lie. *European and Australian Royal Mail Company v. Royal Mail Steam Packet Company*, 30 L. J. 246, C. P.

A separate action cannot be maintained against the master and the owner of a ship for the same identical cause of action. *Priestley v. Fernie*, 34 L. J. Exch. 172.

An instrument not sufficient to pass an easement, because not under seal, may suffice to create a binding contract, for the breach of which an action will lie. *Smart v. Jones*, 33 L. J. C. P. 154; 10 Jur. (N. S.) 678.

A felony cannot be made, in the first instance, the foundation of a civil action. *Wellock v. Constantine*, 2 H. & C. 146, 32 L. J. Ex. 285; as for assaulting a woman and violating her person. *Bissington v. Hutchinson*, 15 L. T. (N. S.) 390; 9 Jur. (N. S.) 232; 7 L. T. (N. S.) 751. But a conviction of a defendant for unlawfully wounding, and his being sentenced to a term of imprisonment, and to pay a sum of money to the prosecutor of the indictment for his necessary costs and loss of time, form no bar to his subsequently suing the defendant for the same assault, and recovering damages for his bodily suffering and medical expenses. *Lowe v. Horwarth*, 13 L. T. (N. S.) 297, Exch. *See Stone v. Marsh*, 6 B. & C. 551.

A grant of an exclusive right of using pleasure boats on a canal will not entitle the grantee to sustain an action against others in exercising the same privilege. *Hill v. Tupper*, 32 L. J. Ex. 217.

To give a remedy over, an authority to defend an action may be implied from a party not answering letters informing him of the proceedings adopted. *Rolph v. Crouch*, 37 L. J. Ex. 8.

To a declaration for sending off rockets and other projectiles over the lands of plaintiff, and thereby frightening and carrying off the plaintiff's lands game. The defendant cannot plead that plaintiff had decoyed the said game from off the lands of defendant by laying down corn and other substances on his lands. *Ibbitson v. Peat*, Ex. 11 Jur. (N. S.) 394.

No vested right of action on a contract for personal services ceases on the death of a party thereto. Death terminates, but does not rescind the contract. *Stubbs v. Holywell Railway Company*, 2 L. R. Ex. 311; 36 L. J. 166. *Boast v. Firth*, 3 L. J. 239.

In a deed of conveyance of land to a purchaser there was the usual recital of the payment of the consideration. The deed was executed by the vendor and delivered as an escrow. The purchase-money not being paid, the vendor brought an action of *indebitatus* for the purchase-money. Verdict for plaintiff set aside and nonsuit entered. *Mainwearing v. Cheese*, Q. B. 14 W. R. 423.

Where a contract becomes impossible of performance without the default of either party, both are excused from its fulfilment, *Appleby v. Myers*, 36 L. J., C. P. 331; 2 L. R. C. P. 651, see *Taylor v. Caldwell*, 32 L. J., Q. B. 144. *Boast v. Firth*, 3 L. J. N. 239.

A foreign sovereign state adopting the republican form of government can sue in the courts here by its recognised name. *United States v. Wagner*, 2 L. R. C. 582. Where a tort has been committed abroad, the *lex foci* will regulate the procedure. The *lex loci* the illegality of the wrong committed. *The Halley*, 17 L. T. Adm. 329.

No action lies against a Lord Lieutenant

I. By whom Administration may be granted.[1]

II. To whom Administration may be granted.

(A) *To the Next of Kin.*[2]

(B) *To Widows, Husbands, and Married Women.*[3]

(C) *To Legatees, Appointees, and Agents.*[4]

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of Ireland in an Irish court during his continuance in office for any act done by him *qua* Lord Lieutenant. *Luby v. Wodehouse*, 17 Ir. Rep. C. P. 618.

[1] Jurisdiction to grant and revoke letters of administration is vested in the Court of Probate, by 20 & 21 Vic. c. 78, s. 4, by District Registrars, s. 46, and by County Court, by sec. 10, 21 & 22 Vic. c. 95, where registrar of principal registry is satisfied personal estate of deceased is under 200*l.* and real estate under 300*l.*

[2] Where a bastard, having no relations, makes a will disposing of part only of his or her property, the crown has a right to a grant save and except, or to a cæterorum grant, but not to a general grant of administration, and the legatees have a right to a grant of administration with the will annexed, limited to the property disposed of by the will. *Rhoades, In Goods of*, 1. L. R. Prob. 119; 35 L. J. Prob. 125.

Cæteris paribus, the male is preferred to the female, in a contest for a grant of administration; but the female, when *prior petens*, is preferred to the male. *Cordeaux v. Trasler*, 4 S. & T. 48; 11 Jur. (N. S.) 587; 34 L. J. Prob. 127.

Where the father of a deceased had not been heard of for twenty-six years, and was believed to be long since dead, the court allowed administration to the son's goods to issue without extracting a grant to the father. *Lindley, In Goods of*, 9 L. T. (N. S.) 243, Ir. Prob. *See In the Goods of Cholwill*, 35 L. J. 75.

Where the persons who are sole next of kin renounce their title to administration, the grant may be to a person who would have been next of kin if the sole next of kin had been out of the way, although such person has no interest. *Johnson, In the Goods of*, 2 S. & T. 595; 7 L. T. (N. S.) 337. The court refused to grant administration jointly to the widow and son of the deceased, no special reason being given for the application. *In the Goods of Newbold*, 36 L. J. P. & M. 14.

[3] The court is precluded by 21 Hen. 8, c. 5, s. 3, from making a joint grant of administration to a widow and one of the persons entitled in distribution, even with the consent of all persons entitled in the distribution. *Browning, In the Goods of*, 2 S. & T. 634. It is no ground for passing over the widow in the choice of an administrator that the assets consist principally of a farm, which would require the superintendence of an active and intelligent farmer. *Carmichael, In the Goods of*, 32 L. J. Prob. 70; 11 W. R. 462. But for sufficient cause in preference to the widow the court will grant administration to the next of kin. *Anderson, In the Goods of*, 33 L. J. Prob. 149; 11 L. T. (N. S.) 21. Administration was granted to a guardian selected by the children where the deceased mother had obtained protection under 20 & 21 Vic. c. 85, s. 21, passing by the husband. *Re Stephenson*, 36 L. J. P. & M. C. 20.

A woman, whose marriage had been dissolved on the ground of her husband's adultery and desertion, died intestate, leaving issue of the marriage one child, a minor. Administration was granted to the grandmother of the child, passing by the father. *In the Goods of Hay* (deceased), 34 L. J. Prob. 3. When husband and wife die by the same calamity, and there is no evidence that the one survived the other, administration will be granted to their respective next of kin. *In the Goods of Wheeler*, 31 L. J. P. & M. 40.

Where a legatee's husband refuses to consent to his wife taking administration, the Court will grant it to the attorney of the legatee. *In re Warren*, 37 L. J. P. & M. 12. It is not necessary that the husband should be cited. *In the Goods of Farraday*, 31 L. J. P. & M.

Where, on marriage, the husband is, by arrangement, excluded from all interest whatever in the then and future property of the wife, the Court will grant administration to the next of kin of the wife, passing over, and without citing the husband. *In the Goods of Ellen Probart*, 36 L. J. P. & M. 71; 16 L. T. 298.

The wife of a convicted felon is, while her husband is undergoing sentence, to be regarded as a *feme sole* for the purpose of making a will, and administration will be granted thereto. *In the Goods of Coward*, Prob. 34 L. J. (N. S.) 120.

A. died, leaving a will, whereby he appointed his wife sole executrix and universal legatee. She proved A.'s will, and afterwards married B., and during her coverture made a will in execution of a power vested in her, and appointed B. sole executor. Upon her death, B. took limited probate of her will, and also administration of the rest of her effects:—*Held*, that B., as representing the whole of his wife's personal estate, was entitled to administration of the unadministered effects of A. *Martin, In Goods of*, 3 S. & T. 1; 32 L. J. P. 5; 7 L. T. (N. S.) 756.

[4] If the court be satisfied that the party entitled to administration desires the person applying to act as his attorney, it will not require a formal power of attorney. *Morley, In Goods of*, 33 L. J. Prob. 108; 10 L. T. N. S. 540. Where a party entitled to the grant, being resident out of England, had, by a power of attorney, specially authorised

(D) *With will annexed or according to Tenor.*[1]

(E) *In case of Minors, or Lunacy of Intestate.*[2]

(F) *In case of Foreign Domicile of Deceased, or Persons dying Abroad.*[3]

(G) *Grant to Creditors or persons interested.*[4]

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his brother to execute for him an instrument of renunciation and consent, the court gave effect to it. *Rosser, In Goods of*, 33 L. J. Prob. 155; 12 W. R. 1014; 10 L. T. N. S. 695. It may be granted to the nominees of residuary legatee, or married woman with a separate estate. *In the Goods of Pine*, 36 L. J. P & M. 95. Where an intestate dies possessed of perishable property, and the goodwill of a business which he had carried on all the next of kin being in Australia, the court will grant limited administration to a near relative of the next of kin. *In the Goods of Young*, 36 L. J. (P. & M.) 80.

[1] A direction to an individual to receive the property and divide it, constitutes him an executor according to the tenor of the will. *Saunders, In Goods of*, 11 Jur. N. S., 1027, Prob. But a direction to a person to pay debts or funeral expenses out of a particular fund only, will not so constitute him. *Toomy, In Goods of*, 3 S. & T. 562. Where the object of a testatrix's bounty was erroneously described, the court, on being satisfied that the misdescription was the result of mistake, granted administration, with the will annexed, to such person. *Hooper, In Goods of*, 13 L. T. (N. S.) 445, Prob. Administration of the effects of a deceased may be limited until the will, or an authentic copy of it, shall be brought into the probate registry. *Johnson, In Goods of*, 12 Jur. (N. S.) 184, Prob. & Matr. An executor named in the will proved the same, but died without having distributed the whole estate. The court decreed administration with the will annexed, of the unadministered property, to the assignee in bankruptcy of the residuary legatee. *Downward v. Dickenson*, 10 Jur. (N. S.) 1084, 34; L. J. Prob. 4. *Allen, in goods of*, 34 L. J. Prob. 1. The court, holding a trust deed to be testamentary, but that the trustee was not entitled to a grant of probate as executor, according to tenor, nor as universal legatee in trust, made a grant of administration with the will annexed to the trustee. *Cosnahan, In Goods of*, 1 L. R. P. & D. 183; 35 L. J. P. & M. 76. An administrator *cum testamento annexo* is not estopped from denying statements in the will, or from claiming property adversely to the will. *Kane v. Kane*, Ir. Rep. 1 Eq. 95.

[2] The consent of next of kin, who are minors, and some of them of tender years, is not sufficient to justify the court in making a joint grant of administration to the widow and one of the other next of kin, unless there are special circumstances for departing from the general practice of the court. *Newbold, In Goods of*, 1 L. R. P. & D. 285. The court granted administration under section 73 of the 20 & 21 Vict. c. 77, to the guardian elected by minors for their benefit, without requiring the citation or renunciation of their next of kin. *Hagger, In Goods of*, 3 S. & T. 65; 9 Jur. (N. S.) 386; 32 L. J. Prob. 96. Under section 73, administration may be granted to the duly elected guardian of minors, limited until one of them should apply. *Burgess, In Goods of*, 9 Jur. (N. S.) 553; 32 L. J. Prob. 158; 9 L. T. (N. S.) 86. The next of kin of a pauper lunatic having been first cited, and having failed to take administration of her estate, administration was granted under the same section to the clerk of the guardians of her parish. *Mile End Old Town Guardians v. Findlay*, 3 S. & T. 265; 9 Jur. (N. S.) 1253; 9 L. T. (N. S.) 346; 33 L. J. Prob. 21. The guardian of an infant, sole next of kin of an intestate, is entitled to take administration of his effects, in preference to creditors. *John v. Bradbury*, 1 L. R. Prob. 245; 15 L. T. (N. S.) 414.

[3] When A. died in France, leaving personal estate there, but none in England, and it was alleged that, by the law of France, her husband, from whom she had eloped, could not establish his claim to her property there without a grant from the Court of Probate. *Held*, that the court had no jurisdiction to make limited grant to enable him to substantiate his claim in the courts of France. *Tucker, In Goods of*, 3 S. & T. 585; 34 L. J. Prob. See *In Goods of Murray*, 16 L. T. 266; and *Veiga, In Goods of*, 3 S. and T. 13; 32 L.J. Prob. 9; 7 L. T. N. S. 644. An executor and trustee lent a portion of the trust fund on the security of a note made payable to him. He subsequently became bankrupt and went abroad, and a new trustee was appointed. Administration with the will annexed was granted to the new trustee, limited to the interest of the *cestui que trust* in the money due on the note. *In the Goods of Hampson (deceased)*, 35 L. J. Prob. 1. See *In the Goods of Cholwill*, 1 P. & D. 192, 35 L. J. 75. The grant of probate will follow a foreign grant when made to a person entitled in his own right to administration, but not to a nominee, without the consent of the former. *Re Weaver*, 87 L. J. P. & M. 41. The mother of an intestate being willing to renounce her right to a grant of administration, and her husband being in Australia, the Court, without requiring the renunciation of her husband, passed her over and made the grant to the intestate's sister under 20 & 21 Vict. c. 77, s. 73. *In Goods of Llanwarne*, 1 L. R. P. & D. 306; 36 L. J. Prob. 25.

[4] The next of kin of an intestate are entitled to administration in preference to creditors, and, as a general rule, will not, at the instance of creditors, be required to give justifying security. *John v. Bradbury*, 36 L. J. Prob. 33; 15 W. R. 285. The creditor of an intestate is entitled to a grant of ad-

(H) *Administration* pendente lite.[1]

(I) *Administration limited to part of an Estate, or limited Time.*[2]

III. Revocation of Letters of Administration.[3]

IV. Administration Bond.[4]

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ministration, although his right of action is barred by the Statute of Limitations. *Coombs v. Coombs*, 1 L. R. P. & D. 288; 15 W. R. 286; 36 L. J. Prob. 21. The court will not grant administration to a creditor without an affidavit of the date when the debt became due. *Rawlinson v. Burnell*, 3 S. & T. 479; 33 L. J. Prob. 123. A surety, who, after the death of the principal, pays off the debt, is entitled to administration. *Williams v. Jukes*, 34 L. J. Prob. 60. So are assignees of bankrupts. *Downward v. Dickenson*, 34 J. L. Prob. 1. But it seems an assignee of a debt due from a person who dies intestate is not so entitled. *Day v. Thompson*, 32 L. J. Prob. 183; 8 L. T. N. S. 701. Though letters of administration were granted to an assignee of a deceased tradesman, limited to the book debts specified in the assignment. *Dixson, In Goods of*, 10 Jur. N. S. 854, Prob. See *Re Coles*, 3 S. & T. 181. An agreement to suspend litigation, and to consent to administration being granted to an individual who had no interest in the property of the deceased, may be enforced under s. 73. *Farrell v. Brownbill*, 10 Jur. (N. S.) 593; 33 L. J. Prob. 105. See 35 L. J.; P. & M. 91. Administration of the effects of a pauper who died chargeable to a union granted to the guardians of the union as creditors under 12 & 13 Vict. c. 103, s. 16. *Cleaver v. Next-of-kin of M'Kenna*, 35 L. J. P. & M. 91. So to the applicant as a creditor, although by the operation of the Statute of Limitations, the applicant was debarred from recovering his debt against the estate of the deceased. *In the Goods of Coombs*, 35 L. J. P. &. M. 78; and 36 L. J. P. & M. 21. When the next of kin have renounced they have no right to be heard as to which of the creditors is entitled to administration. *In the Goods of Smithson*, 36 L. J. P. & M. 77. Although it is the practice of the Court to require a creditor applying for administration, to state on oath that his debt was incurred within six years; yet in a case where the intestate died insolvent, the Court allowed a citation to issue against the next of kin, at the suit of a creditor whose debt had been incurred more than six years. *In the Goods of Coombs*, P. & M. L. R.; 1 P. & D. 193; 35 L. J. 78. Where next of kin of an intestate, whose estate was insolvent, renounce administration, their consent that a particular creditor shall be an administrator will not be regarded, in opposition to the wishes of the bulk of the creditors who agree upon a nominee. *In the Goods of Smithson*, 36 L. J. P. & M. 77.

[1] The rule that the Probate Court will grant administration *pendente lite* in all cases in which the Court of Chancery would grant a receiver, is subject to some exceptions; it will apply where there is no one legally entitled to take possession of deceased's property; but where the deceased was in partnership with the person whom he named executor, and there was no evidence to show that the property was being improperly dealt with, the court refused to interfere. *Horrell v. Witts & Plumley*, 1 L. R. P. & D. 103; 35 L. J. 55. *Bellew v. Bellew*, Jur. (N. S.) 588; 34 L. J. Prob. 125. But, in appointing such an administrator, the Court cannot, except with the consent of all interested parties, give him special powers. *Whittle v. Keats*, 34 L. J. Prob. 54. *Horrell v. Witts*, 14 L. T. (N. S.) 136. The practice of the Court hitherto has been not to grant administration pending suit, unless by consent, or on proof that such a grant was necessary for the preservation of the property; but in future cases the Court will follow the practice of the Court of Chancery in appointing receivers, and will appoint an administrator pending suit, where a bonâ fide suit is pending, irrespectively of the property being in particular danger. *Bellew v. Bellew*, 4 S. & T. 58.

[2] Where there is no property in this country to found the jurisdiction of the Court, so that it could grant a general administration, yet it may grant a limited one to attend and substantiate proceedings in the Court of Chancery. *Turner, In Goods of*, 10 Jur. (N.S.) 708; 33 L. J. Prob. 180. See *Day v. Thompson—Frampton, In Goods of*, 3 S. & T. 169. A seaman in the Royal Navy having died a bachelor, a bastard, and intestate, the solicitor of the Treasury applied for a grant of general administration, but not producing the certificate of the inspector of seamen's wills, the Court refused to make a general grant, or other than "save and except pay and prize money." *In the Goods of Beavan*, 1 L. R. P. & D. 15. Where an intestate dies possessed of perishable property, the Court will grant limited administration to a near relative of the next of kin. *In the Goods of Young*, 36 L. J. P. & M. 80. The Probate Court will not grant administration limited to substantiate proceedings in Chancery, until such proceedings have actually been commenced. *In the Goods of Gordon*, Ir. Rep. 1 Eq. 79.

[3] A defendant, as next of kin, took out administration of the effects of a deceased person and swore that she died intestate. Afterwards evidence was produced to show that a will of the deceased was in existence at the time of her death, and that it had passed into the hands of the defendant. The Court revoked the administration, and granted probate. *Padmore v. Whatton*, 10 Jur. (N. S.) 756; 33 L. J. Prob 143; 10 L. T. (N. S.) 754.

[4] The Court has no power, under any cir-

V. Practical Proceedings as to Granting.[1]

ADMIRALTY, Courts of. 1 Ab. 183; *See* also Prize, Ship and Shipping; *See* 24 & 25 Vic. c. 10; 26 & 27 id. c. 24; 30 & 31 id. 45; as to appointing Vice-Admiralty Courts, *see* 26 & 27, c. 65; as to opening Courts to Practitioners, 22 & 23 Vic. 6; 24 id. c. 10; Suits in *see* 31 & 32 id. c. 78. See Rules, 1854–55, 59; Coote, Adm. App.; Orders in Council. id. County Court Jurisdiction, 31 & 32 Vic. c. 78; *post*, County Court.

cumstances, to dispense with an administration bond. *Powis, In Goods of*, 34 L. J. Prob. 55. Nor the mere fact that a receiver has been appointed, any ground for dispensing with security on a grant of administration. *Jackson v. Jackson*, 35 L. J. Prob. 3; 14 W. R. 111; 13 L. T. (N. S.) 336. The Court has a discretion as to ordering the assignment of an administration bond for the purpose of its being sued upon. It will order the assignment if satisfied that the application is *bonâ fide*, that a *primâ facie* case of breach of the condition is made out, and that the applicant is the proper person to sue. *Young, In Goods of*, 1 L. R. Prob. 186; 35 L. J. Prob. 126; 14 W. R. 821, 970; 14 L. T. (N. S.) 634. Sureties to an administration bond may be persons resident out of its jurisdiction, when the principal is unable to procure sureties within, provided a writ or summons is servable on the sureties. *Ballingall, In Goods of*, 3 S. & T. 441 n. *Herbert v. Sheil*, 33 L. J. Prob. 142. *Re Houston*, 35 id. 47; 1 L. R. P. & D. 85. May be cancelled where amount excessive. *Goold, In Goods of*, 11 Jur. (N. S.) 288; 34 L. J. Prob. 105; 13 L. T. (N. S.) 193. A. died intestate, leaving B. his only next-of-kin. His personal estate was of the value of about £55, and being unable, through poverty, to obtain sureties to the amount of £200, the Court, under sect. 82 of 20 & 21 Vict. c. 77, reduced the penalty to £60. *Harrigan, In Goods of*, 32 L. J. Prob. 204. See *De la Farque*, 2 S. & T. 631; 31 L. J. Prob. 194.

Where administration was granted merely to enable representatives to execute a formal release to a trustee under a marriage settlement, the court allowed the property to be sworn under £20. *In the Goods of Stacpoole*, 30 L. J. P. & M. 191. The Court will not discharge sureties on two other persons being willing to become sureties in their place; the new sureties could not be made responsible for past transactions. *In Goods of Stark*, 1 L. R. P. & D. 76; 35 L. J. 42. Where a person applying for administration was solely entitled to the personal estate of the deceased, and there were no creditors, the Court allowed the sureties to the administration bond to be persons resident in Scotland. *Houston, In Goods of*, 1 L. R. Prob. 85; 35 L. J. Prob. 41.

Where, under a misapprehension as to the value of the personal estate of an intestate, the penalty of an administration bond was too large, the Court, upon the execution of a fresh bond in a penalty proportioned to the actual value of the estate, ordered the original bond to be delivered out of the registry to be cancelled. *Goold, In Goods of*, 1 S. & T. 20.

Stamp duty on Bond (13 & 14 Vict. c. 97).

		£	s.	d.
Personalty not exceeding		50	1	3
£50 and not exceeding		100	2	6
Amounting to 100		150	3	9
150		200	5	0
200		250	6	3
250		300	7	6
300		400	10	0
400		500	12	6
500		600	15	0
600		700	17	6
700	and upwards	800	20	0

By 27 & 28 Vic. c. 56, s. 4, duties on value under 100*l.* repealed on probates and administration.

[1] Where parties interested under a testamentary paper have been cited to appear and propound it, and have not appeared, the Court will grant administration as to an intestate, or probate of an earlier will, as the case may be. *Morton v. Thorpe—Morton, In Goods of*, 3 S. & T. 179; 9 L. T. (N. S.) 300. The 50th rule directs that no person who renounces probate or letters of administration in one character is to be allowed to take representation to the deceased in another, is for the guidance of the registry, but capable of modification by the Court. *Loftus, in Goods of*, 3 S. & T. 307; 10 Jur. (N. S.) 324; 33 L. J. Prob. 59; 10 L. T. (N. S.) 240.

An additional confirmation, granted under sect. 12 of the 21 & 22 Vict. c. 56, does not apply to an original confirmation granted before that act came into operation. *Gordon, In Goods of*, 2 S. & T. 622.

An order on a person to pay costs is equivalent to an order to pay out of deceased's estate, and if the assets have been properly exhausted, no attachment will be granted for disobedience. *Williams, In Goods of*, 10 L. T. (N. S.) 583, Prob.

Semble, an administrator might be guilty of such misconduct as to make him personally liable for costs, but mere delay in taking out administration is not such misconduct. (Ib.)

The Court admitted a declaration on oath made in the presence of a notary public in France, although it was not shown that none of the authorities mentioned in the statute 18 & 19 Vic. c. 42, were resident at the place, contrary to the decision in *In the Goods of Bernard. In the Goods of Lambert*, 35 L. J. P. & M. 64.

It is not necessary, in a case of administration on presumption of death, in an affidavit for administration, to negative the existence of the persons who would, if alive, have prior interests to the applicant at the

I. Jurisdiction of the Court of Admiralty, Generally.[1]

II. Proceedings and Costs in.[2]

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time of the death of the deceased, if the applicant is unable to do so. It is enough to negative their existence at the time of swearing. *Sloane, In Goods of*, 11 L. T. (N. S.) 149, Prob.

Objections to the validity of the bond must be determined by a court of common law. The court will not direct the bond to be assigned; if the proceeding appears to be wholly frivolous and vexatious. *Baker v. Brooks—Marsham v. Hughes*, 3 S. & T. 32; 8 L. T. (N. S.) 89.

Assignee may maintain an action for the general benefit of all parties interested in the estate, but not for his own or the benefit of any one in particular. *Saundry v. Mitchell*, 3 B. & S. 405; 9 Jur. N. S. 968; 32 L. J. Q. B. 100; 11 W. R. 363; 7 L. T. N. S.) 849. Such a bond cannot in general be cancelled and new sureties substituted. *Re Stark*, 35 L. J., P. & M. 42.

The Court will not grant administration of the effects of (including wages due to) an intestate seaman, to the crown, unless the provisions of the 11 Geo. 4 & 1 Wm. 4, c. 20, have been complied with, although the crown is not specially mentioned in the act. *Bevan* (alias *Barker*), *In Goods of*, 11 Jur. N. S. 982; 14 W. R. 147, Prob.

An administration bond forfeited before the bankruptcy of the administrator, is not proveable under the Act of 1849, and consequently a certificate under this Act is no bar to an action on the bond. *Marshman v. Brookes*, 3 H. & C. 908.

[1] It possesses jurisdiction as to seamen and masters' wages (36 L. J. Ad. 13), lien (36 L. J. Ad. 9), salvage, towage, pilotage, necessaries to a foreign ship, collision of vessels, bottomry, obtaining possession by owner, and protection of dependent part-owner, derelicts, goods found in possession of pirates, assaults by masters, and in some instances of negligence and for wrongful dismissal. *Coates, Adm. Great Eastern*, 34 L. J. 5.

This jurisdiction is extended by 24 & 25 Vic. c. 10, to claims for building, equipping, or repairing ships for necessaries supplied; damage to cargoes imported, and for damage to any ship, and to questions as to ownership of ships. By the 14th sect. it is made a court of record; and by s. 15 orders and decrees are to have the effect of a judgment at common law, and a power of appeal is given on interlocutory matters, and those of superior courts extended to the Admiralty. The 26 Vic. c. 24, facilitates the appointment of Vice-Admiralty Courts.

The Court of Admiralty has jurisdiction under 24 & 25 Vic. c. 10, s. 7, to entertain a claim against a steam-ship for personal damage caused by the paddles coming in contact with the ropes and air-tubes attached to a diver. *The Sylph*, 2 L. R. Ad. & E. 24; 37 L. J. 14. And every possible damage by collision, 37 L. J., Ad. 16, and to award compensation under Lord Campbell's Act. *The Guldfaxe*, 3 L. J. (N. S.) 263.

In a cause between co-owners under s. 24 & 25 Vic. c. 10, and against freight which was detained by the Dock Company pursuant to a stop order, the question was, whether the proceedings were to be *in personam* or *in rem* (sec. 35). The Court ordered a monition against the Dock Company to bring in the freight; and proceedings against the defendant *in personam*. *The Meggie*, 1 L. R. Adm. & Ecc. 77.

The Court of Admiralty has jurisdiction in a cause of wages, to entertain a claim for compensation for wrongful discharge of the seaman during the term of his engagement. *The Great Eastern*, L. R. 1 Ad. & Eccs. 384.

Objection to the jurisdiction may be taken at any stage of the cause. *The Mary Anne*, 34 L. J. Ad. 73. *See The Lady Blessington*, id. 72. The breach of duty or contract which gives the Court jurisdiction under the act of 1861, must be in respect of goods absolutely to be delivered in England or Wales. *The Kasan*, 32 L. J. Ad. 97. *See the Danzig*, id. 164.

Where the Court has no jurisdiction, the defendant is not prejudiced by having appeared absolutely. *The Eleanor*, 33 L. J. Adm. 19; 9 L. T. (N. S.) 397. *See* 33 L. J. id. 208; 10 L. T. (N. S.) 190. It cannot entertain a suit for money advanced to the master of a ship unless it was to be applied for the purchase of necessaries. *The Aaltje Willemina*, 1 L. R. Ad. & Ecc. 107.

The refusal by the master of a ship to deliver goods under a claim to stop *in transitu* is a breach of duty, which gives the Court of Admiralty jurisdiction under sect. 6 of the 24 Vict. c. 10. *The Tigress*, 9 Jur. (N. S.) 361; 32 L. J. Adm. 97; 11 W. R. 538; 8 L. T. (N. S.) 117.

A foreign vessel was chartered to carry coals on the charterers' account to a foreign port, and bring home to England a return cargo of timber; the charterers sued the ship under sect. 6 of the 24 & 25 Vict. c. 10, claiming damages for non-delivery of coals on the outward voyage, and for improper delivery of the timber on the return voyage: —*Held*, that they were not entitled to sue in respect of the non-delivery of the coals abroad, as the statute did not give the Court such jurisdiction. *The Kasan*, 9 Jur. N. S. 234; 32 L. J. Adm. 97; 37 id. 17 id. 12.

A right of action is given to a consignee by sect. 6 of the 24 & 25 Vict. c. 10, in all cases in which there is a non-delivery of goods, subject only to the condition of the arrival of the vessel upon which the goods were to be shipped within an English port. *The Danzig*, 32 L. J. Adm. 164; 9 L. T. (N. S.) 208. It may decree possession of a vessel to the owner, who has been deprived of it by force, violence, or fraud. *The Beatrice*, 36 L. J. Ad. 9.

[2] The pleadings should be so framed as

III. In Collision and in Salvage Suits (*See* Salvage, Ship, and Shipping).

IV. Appeals from.[1] *See* Rules and Orders, 1 Dec. 1865, 35 L. J. Ad. 1.

ADMIRALTY, Lords of.[2]

ADMISSIBILITY of Evidence. *See* Evidence.

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to enable an examiner to elicit in evidence all the facts of the case. *The Claus Thomesen*, 9 Jur. (N. S.) 388; 32 L. J. Adm. 106; 11 W. R. 538; 8 L. T. (N. S.) 121. Where an arrest was made without notice of claim, and for a sum disproportionate to the value of the vessel and the services rendered, the court awarded damages. *The Eleonore*, 33 L. J. Adm. 19; 12 W. R. 218; 9 L. T. (N. S.) 397. *See the Cheshire Witch*, 11 L. T. (N. S.) 350 Adm. *The Europa*, 9 id. 781. In a cause of possession by an owner of the greater part of a vessel, the master, owning the remaining part, is not entitled to retain possession of the vessel upon an offer of security to the amount of his co-owners' interest. *The Kent*, 1 Lushington, 495. A ship's husband and managing owner caused a bail-bond to be given in the names of his co-owner and himself, in a suit for a collision, and the suit terminated in favour of the plaintiffs: held, that the co-owner was liable to indemnify the bail. *Barker v. Highley*, 15 C. B. (N. S.) 27; 10 Jur. (N. S.) 391. The Court of Admiralty will admit in evidence lighthouse journals to prove the state of the wind and weather without requiring the testimony of the person who made the entries. *The Maria Das Dorias*, 11 W. R. 500 Adm. The costs of an issue, upon which he is unsuccessful, may be taxed against a party, though successful in the suit. *The Laurel*, 33 L. J. Adm. 17; 9 L. T. (N. S.) 457. A registered part-owner, who appears from other circumstances to be only a mortgagee, is not entitled to arrest the vessel for bail for safe return. *The Innisfallen*, 35 L. J. id. 170. *See the Keshel*, 1 L. R. Adm. & G. 78. A master of a ship, before bringing his suit for wages and disbursements, should furnish his accounts; and if he do not do so he will not be entitled to his costs. *The Fleur de Lis*, 1 L. R. Adm. 49. Where a ship is arrested it is irregular for the plaintiff to pay the wages without obtaining the consent of the court. *The Cornelia Henrietta*, 1 L. R. Adm. 51. After an order of the Admiralty Court for payment of money out of registry to the proctor of a suitor, a garnishee order nisi was made against the fund, and such order was made absolute, the proctor not appearing, though he had notice:—*Held*, the proctor had not lost his lien for costs. *The Jeff. Davis*, 2 L. R. 2 Adm. & Ecc. 1; 17 L. T. 151. Where plaintiff is a foreigner, he must give security for costs, but not a defendant a foreigner. 36 L. J. Adm. 10. The words "security given," in 23 & 24 Vic. c. 127, s. 1, mean "bail" in the usual course. *The Amazon, the Osprey*, Adm. 36 L. J. 4. So long as the mortgagee of a ship does not take possession, the mortgagor retains all the rights and powers of ownership, so far as his acts do not materially impair the security of the mortgagee. And a mortgagee not in possession cannot maintain an action of restraint in the Admiralty Court. *The Innisfallen*, 1 L. R. Adm. & Ecc. 72; 35 L. J. 110. A compromise after suit may be referred to the registrar, to say whether it is fair and reasonable. *The Great Eastern*, 3 L. J. N. C. 40. Upon application for inspection of documents, the court will order them to be brought into the registry, and after perusal of them decide whether or not the application should be granted. *The Macgregor Laird*, 36 L. J. Adm. 10; 1 L. R. Adm. 307; 15 W. R. 262.

[1] May now be on interlocutory matters. 24 Vic. c. 10. Alien appellants must give security for costs of appeal. *The Helene*, 35 L. J. Ad. 1. To justify the appellate court reversing a decree of the Court of Admiralty, the court must be satisfied that the decree is founded on some substantial mistake, either in law or fact. *Iron Screw Company v. Moss*, 15 Moore, P. C. 122.

The Privy Council allowed an appeal to be prosecuted from a decree of a Vice-Admiralty Court, notwithstanding that it had not been lodged until after the expiration of the six months, it being shown that there had been a *bonâ fide* intention to appeal in due time, but that it was delayed pending the decision of an appeal in which the same question arose. *Cassanora v. The Queen. The Ricardo Schmidt*, 1 L. R. App. P. C. 115. New evidence will be received on appeal, 2 L. R. Ad. 57.

As to the limitation of time to apply for appeals from decrees or orders of Vice-Admiralty Courts in India. See 30 & 31 Vic. c. 45, s. 18.

[2] C. contracted with the commissioners of the Admiralty to convey the mails from Calais to Dover during the continuance of the contract, and the commissioners agreed to pay the suppliant from and out of the monies to be provided by Parliament 18,000*l.* per year; the contract to continue from the date until A.D. 1870:—*Held*, that there was no obligation on the part of the commissioners to employ C. under the contract, Parliament not having provided monies for the payment. *Churchward v. Reg.*, 1 L. R. Q. B. 173; 14 L. T. (N. S.) 57.

ADMISSIONS.[1] 1 Ab. 195. *See* Evidence.

ADULTERATION of Food.[2] 1 Ab. 206.

ADULTERY.[3] *See* Husband and Wife; Matrimonial Causes.

ADVERSE Possession.[4] 1 Ab. 208; 3 & 4 Wm. 4, c. 27; came into operation 1 July, 1834.

ADVERTISING for Stolen Goods.[5]

ADVOWSON, Sale of, by Lord Chancellor. 26 & 27 Vic. c. 120.

AFFIDAVIT.[6] 1 Abr. 234. Duty on, repealed by 4 & 5 Vic. c. 34.

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[1] To bind a principal, when made by an agent, they must be within the scope of his duty or authority. *Great Western Railway Company v. Willis*, 18 C. B. 748, N. S. 34 L. C. P. 195. *See* 8 Bing. 451.

On a declaration in the *indebitatus* form, the only plea being in confession and avoidance, and no one appearing to support it, the plaintiff must give evidence of the amount of his claim, as the sum laid in the declaration is not admitted. *Hayward v. Radcliffe*, 4 F. & F. 500.

Pickard v. Sears (6 A. & E. 469). The doctrine of this decision applies only where a representation is made as to an existing state of facts, and not as to what is to be the state of facts at some future time. Per Monahan, C. J. in *M'Evoy v. Drogheda Harbour Commissioners*, 16 W. 38, C. P. Ir.

[2] The earlier statutes, 9 Anne, c. 12, 56 Geo. 3, c. 58, 1 Wm. 4, c. 64, not being effectual, 23 & 24 Vic. c. 48, make further provision. By s. 1, every person who sells any *articles of food or drink*, with knowledge that it contains any ingredient injurious to *health*, or who sells as pure any adulterated article, is subject to a penalty of 5*l*. On repetition of offence, name and abode of offender may be published. By s. 2, analysts are to be appointed. Persons convicted of selling adulterated patented articles may have a case stated for opinion of superior court, ss. 3–8. In construeing the "articles of food or drink" to include all eatables and drinkables, not being medical drugs or articles usually sold as medicines. Act not to affect the ordinary reduction of British or colonial spirits. Act extends to England, Ireland, and Scotland.

[3] By 20 & 21 Vict. c. 85, 3 & 4 Wm. 4, c. 27, in lieu of the former action for criminal conversation, by way of equivalent for the husband's wrong, the adulterer is made co-respondent in the suit, and liable for costs; and in certain cases for damages on behalf of the injured party.

[4] In 1830 a tenancy at will commenced, no rent being paid. In 1844 a new owner of the estate served the tenant with a declaration in ejectment, but it was arranged verbally that the tenant should give up a portion of the land, and that he should be permitted to occupy the rest for his own and his wife's life; no rent was paid. Survivor died in 1861. *Held*, that a new tenancy was created in 1844, and that no title against the landlord was acquired under 3 & 4 Wm. 4, c. 27, *Locke v. Mathews*, 32 L. J. N. S. 98, C. P. 13 C. B. N. S. 753.

So where a lady of a manor, in 1781, granted to several persons, as trustees of a charity, license to enclose a piece of the waste, and that they and their heirs might hold the same, rendering therefor the yearly rent of 5*s*. for ever; the trustees entered into possession, and were in possession at the passing of 3 & 4 Wm. 4, c. 37:—*Held*, that the trustees were only tenants at will, and did not acquire a title by adverse possession. *Hodgson v. Hooper*, 3 E. & E. 149. When adverse as against road trustees, 5 L.R. Eq. 409.

A father seised of land made a will, invalid as to real estate, whereby he appointed his brother, to whom he was indebted, executor, and died, leaving two infant daughters. The uncle entered upon the real estate and kept down the interests on a mortgage, and laid out considerable sums on improvements:—*Held*, that the possession of the uncle could not be treated as having been adverse to his nieces. *Pelley v. Bascombe*, 11 Jur. N. S. 52; 34 L. J. Chanc. 233, L. J.

[5] By 24 & 25 Vict. c. 90, s. 100, if any person shall publicly advertise a reward for the return of any property *stolen* or *lost*, and in such advertisement use any words purporting that *no questions will be asked*, or inquiry made after the person producing such property, or promise to return to any pawnbroker money advanced on such property, he shall, as well as the printer and publisher of such advertisement, be subject to a penalty of 50*l*., to be recovered, with full costs of suit, by any person who will sue for the same. And by 24 & 25 Vict. c. 96, s. 101, every person who shall corruptly take any money or reward on account of helping the owner to any property stolen, taken, or converted (unless he cause the offender to be brought to trial), shall be guilty of felony, subject to penal servitude for not above seven nor less than three years, or imprisonment not above two years, with or without hard labour, solitude, or whipping if under sixteen years of age.

[6] An affidavit cannot be used even against the deponent himself, without proof of his handwriting. *Barnes v. Parker*, 15 L. T., (N. S.) 218. Where sworn abroad before a notary public, it may be admitted without

AFFILIATION. *See* 1 Ab. 256; stat. 7 & 8 Vic. c. 181, explained by 8 Vic. c. 10.

I. Summons and Orders of Affiliation.[1]
II. Evidence on Affiliation Summons.[2]
III. Time for Appealing against Order.[3]

AFFIRMATION instead of Oath by Quakers and Separatists. 3 & 4 Will. 4, c. 49; 1 & 2 Vic. c. c. 55, 77; 22 id. c. 10. In Civil Proceedings, 17 & 18 id. c. 125. In Criminal, 24 & 25 id. c. 66.

AGENT. *See* Principal and Agent, and 6 Geo. 4, c. 99; 5 & 6 Vic. c. 39.

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showing that none of the authorities in the 18 & 19 Vic. c. 42, were resident in the place. *In Goods of Lambert*, 35 L. J., P. & M. 64, s. 2, S. & T. 489. No affidavit can be used on an application for a new trial, unless sworn before a commissioner of the court in which it is to be used. *Blakemore v. Abeles*, 11 Jur. (N. S.), 325; 11 L. T. (N. S.) 716—Exch. An affidavit to hold to bail, stating simply that the defendant was "well and truly indebted to the plaintiff for money lent and goods sold and delivered," was held by the Court to be bad, as not stating the cause of action with sufficient precision. Enough must appear in the affidavit to assign perjury. *Handley v. Franchi*, 36 L. J. Ex. 32.

[1] An application for a summons for an order of affiliation must be made within twelve calendar months after the birth (unless money has been paid for its maintenance within that period); and when such summons has been heard and dismissed, no other summons can issue upon the same application. *Reg. v. Thomas*, 8 L. J. (N.S.) 466—Q. B. A woman having applied on two occasions for an order of affiliation, the petty sessional division in which she had been residing with her parents, and had been refused on the merits, took lodgings in a neighbouring borough, "because," as she deposed, "people said if she came there she would have a better chance;" and when she had been there nearly a month, she applied to the borough justices and obtained an order:—*Held*, that as the woman's object by removal was to obtain a new tribunal, she did not reside within the borough so as to give jurisdiction, under 7 & 8 Vic. c. 101, s. 2. *Reg. v. Myott*, 32 L. J., M. C., 138; 11 W. R. 424; 7 L. T., N. S., 785.—Q.B. An order of affiliation is valid and indisputable, although the putative father was abroad at the time of the order, and had not received the summons, if it was proved before the justices that the summons was left at the last place of abode of the putative father. *Reg. v. Damerell*, 2 L. R., 3 Q. B. 50; 37 L. J., M. C., 21. A summons, under 7 & 8 Vic. c. 101, s. 2, having been heard and dismissed on the merits, one of the chief witnesses for the putative father was afterwards convicted of perjury on the evidence he had given. A fresh application was then made, and on the hearing of the summons it was objected for him that the justices had no jurisdiction, by reason of the previous dismissal on the merits. The justices determined to hear the application, saying the previous dismissal was obtained by false evidence, and having heard the applicant and corroborative evidence, made an order of affiliation:—*Held*, that the justices had jurisdiction, and the order was valid. *Reg. v. Gaunt*, 2 L. R., Q. B. 466; 36 L. J., M. C. 89; 15 W. R. 1172; 16 L. T. (N. S.), 379. At the hearing of an application by the mother against the father of a bastard child for an order under 7 & 8 Vic. c. 101, s. 3, it appeared that, prior to the application, he had agreed to make her an allowance for the support of the child, had paid in advance for two years, of which a year and a half were unexpired. At the time of making the advance he had also paid her the sum of 10*l.* in consideration of which she had agreed to release him from all further payment. On appeal,—*Held*, that the contract was not void in law, but that neither that nor the release was a bar to the magistrate's jurisdiction to make the order, the order being for the benefit of the child, and not of the mother exclusively. *Follit v. Koetzow*, 2 El. & El. 730. Where an application for an order of affiliation is dismissed not upon its merits, the woman is barred from making another application. *Reg. v. Harrington*, 12 W. R. 420; 9 L. T. (N. S.) 721.—Q. B. A dismissal upon the ground of there being no sufficient corroborative evidence is not a dismissal upon the merits.—Ib.

[2] If, upon the hearing of a bastardy summons against A., the mother deny that B. has had connexion with her at a particular time, evidence may be given to show that B. had such connexion with her, supposing that the effect of such evidence is not merely to contradict her, but also to show that B. might, by means of that connexion have been the father of the child; such evidence being material to the issue. *Garbutt v. Simpson*, 32 L. J., M. C., 186; 11 W. R. 751; 8 L. T. (N. S.) 423.—Q. B.

[3] Sec. 4 of the 7 and 8 Vic. c. 181, enables the putative father of a bastard to appeal against an adjudication and order of justices in petty sessions, if, within twenty-four hours after the making thereof, he give notice of appeal to the mother:—*Held*, that the twenty-four hours begin to run from the time of the oral adjudication and order of the justices in petty sessions, and not from the time of the formal drawing up and signa-

AGISTMENT.[1]

AGREEMENT. *See* Contract and Titles according to subject matter of.

AGRICULTURAL Tenant's Fixtures. 14 & 15 Vic. c. 35. Agricultural Gangs, 30 & 31 id. c. 130.

AIDERS and Abettors.[2]

ALE and Beer-Houses. 1 Ab. p. 275; *See* Stat. 1 Wm. 4, c. 64; 4 & 5 Wm. 4, c. 85; 3 & 4 Vic. c. 61; 17 & 18 id. c. 79; 24 & 15 Vic. c. 75; *See* Inn and Innkeeper; Refreshment Houses, 25 & 26 id. c. 22.

I. Statutory Regulations as to Licence.[3]

II. Generally, as to Closing.[4] As to Closing on Sunday. *See* Inns and Innkeepers.

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ture thereof. *Ex parte Johnson*, 3 B. & S. 949; 9 Jur. (N. S.) 1128; 32 L. J., M. C., 193; 8 L. T., (N. S.) 275 Q.B.

[1] Semb, merely showing that a defendant had to agist a horse, and had lost him, without any affirmative proof of negligence, on the authority of *Broadwater v. Bolt*, Holt. N.P.C. 547, is not sufficient; *Evans v. Tasker*, 3 L. J. N. C. 318.

[2] An indictment charged K. and W. with false pretences. The evidence was, that K. and P., acting together, were the chief parties by whom the false pretences had been made. The acts of P. were held the acts of K., and admissible against him. *Reg. v. Kerrigan*, 1 L. and C. C. C. 383; 9 Cox, C. C. 441; 33 L. J. M. C. 71; 12 W. R. 416; 9 L. T. (N. S.) 843. Where on a joint indictment and trial for murder, of principal and accomplice, the jury were discharged, and subsequently the principal was tried alone, and the evidence of the accomplice was received on the trial, though she had neither pleaded guilty nor had a verdict of not guilty been taken against her: her evidence, it seems, was admissible, but the jury should be told to look at her evidence with great caution, and her evidence should be confirmed. The proper course is that the accomplice should first be either acquitted or convicted and sentenced. This question of evidence cannot be raised on a writ of error. *Charlotte Winsor v. The Queen*, 1 L. R. Q. B. 289; 35 L. J. M. C. 121. Two persons were driving along a road with a lawful object, when one of them got out of the cart, went into a field, and shot a hare, the other remaining in the cart, and waiting in the road, received the hare; the former was convicted of trespass, under 11 & 12 Vict. c. 45, s. 5:—*Held*, that the latter might be convicted as an aider and abettor; if not as a principal. *Stacey v. Whitehurst*, C. P. 13 W.R. 384. To incite a servant to rob his master is a misdemeanour at common law, *Reg. v. Quail*, 4 F. & F. 1076. A person cannot be indicted under 24 & 25 Vict. c. 94, s. 2, for counselling another to commit a felony, unless a felony is actually committed by such person. *R. v. Gregory*, 36 L. J. M. C. 60; 10 Cox. C. C. 459.

[3] By 3 & 4 Vic. c. 61, no license to retail beer or cider shall be granted to any one except the real resident holder and occupier of the house, and that the house, if situated in the metropolis, or in any place containing more than 10,000 inhabitants, shall not be of less annual yearly value than 15*l.*; nor in places of which the population shall be betwixt 10,000 and 2500, of less annual value than 11*l.*; nor in any other place of a less annual value than 8*l.*; and every person applying for a license shall produce a certificate from an overseer of his being the real occupier of the house, and of the amount at which it is rated in one rating to the poor-rates according to the last rate; but in case of a new house, the overseer may certify that it is of not less than the required annual value, and that the occupier has applied to be rated: in extra-parochial places the certificates of two inhabitant householders to be sufficient. Upon the death of a person licensed to sell beer, the widow, or child, or administrator, may continue to sell until the expiration of the term of the license, on having the license endorsed as the commissioners of excise may direct. Persons selling beer or cider without a license are subject to a fine of 5*l.* in addition to any excise penalty, but no information to be laid for the recovery of such fine except by a constable or other officer of the peace. By the Stamp Act of 1864, tobacco licenses granted to persons who retail beer not consumed on the premises are to expire on October 10 in every year.

[4] By 3 & 4 Vic. c. 61, no person shall keep his house open for the sale of beer or cider nor shall suffer any beer or cider to be drunk or consumed in his house, at any time before the hour of five o'clock in the morning, nor after twelve o'clock at night, of any day in the week in the cities of London or Westminster, or within the boundaries of any of the boroughs of Marylebone, Finsbury, the Tower Hamlets, Lambeth, or Southwark: nor after eleven o'clock within any parish or place within the bills of mortality, or within any city, town, or place, the population of which shall exceed 2500; nor after ten o'clock in the evening elsewhere; nor at any time before one o'oclock in the afternoon, or at any time during which the

III. Legal Proceedings connected with.[1]

ALIEN.[2] 1 Ab. c. 2015. 7 & 8 Vic. c. 66. *See* Copyright; Domicile; Foreign Law.

ALIMONY. 1 Ab. 297. *See* Husband and Wife; 20 & 21 Vic. c. 85, ss. 24–32; and, as to Settlements, 22 & 23 id. c. 61, s. 5; Macqueen, on Marriage, Divorce, &c., 2nd ed. p. 135; Inderwick's Matrimonial Causes Act, p. 11; Browning's Divorce Court Practice.

I. *Pendente lite*, and Proceedings connected with, p. 16.

II. Permanent, and Proceedings connected with, p. 16.

III. Payment, and Enforcing Payment of, p. 16.

houses of licensed victuallers now are or hereafter shall be closed, on any *Sunday*, *Good Friday*, *Christmas Day*, or any day appointed for a public fast or thanksgiving. The 28 & 29 Vic. c. 77, amends the 27 & 28 Vic. c. 64, and empowers justices to grant licenses to victuallers and refreshment-house keepers, suspending the early closing of their houses when necessary or desirable for the accommodation of a considerable number of persons attending market or following their lawful calling. A beer-house keeper, whose house is situate in a township or hamlet maintaining its own poor, and constituted into a district chapelry, the population of which does not amount to 2500, but being in a parish containing a population greater than 2500, is entitled to the privilege of keeping his house open until eleven o'clock at night. *Reg. v. Charlesworth*, 20 L. J. (M. C.) 181, *Smith v. Redding*, L. R., 1 Q. B. 489; 35 L. J. (M. C.) 202; 12 Jur. 618, 14 L. J. 358; *Washington v. Scott*, 13 W. K. 929; *Windsor v. Jeffery*, id. A place, to be within 3 & 4 Vic. c. 61, s. 15, must be a place of the same kind as those mentioned before it in the section (parish, &c.); and a mere aggregation of houses, though separate from other houses, and known by a distinct name, is not such a place. *Scott v. Washington*, id. A house in a hamlet which is more than one mile distant from the spot used as a polling place for the parliamentary borough, though within one mile from the boundary of the borough, is not privileged to be kept open until eleven o'clock at night. Id. The exemption in 6 Geo. 4, c. 81, s. 11, in favour of persons duly licensed to sell beer, &c., and carrying on their trade in booths, tents, or other places, within the limits of any lawful fair or public races, relates only to the exciseable penalties imposed by the act, and does not protect any person so selling beer, &c., from his liabilities under 35 Geo. 3, c. 113, s. 1, for selling without a magistrate's license. *Ash*, app. *v. Lynn*, resp., 35 L. J. 128, Q. B.; 12 Jur. (N.S.) 485: 14 L. T. (N.S.) 224; 35 L. J. 6, 159; 14 L. T. 224 R. M. Races held in a private field hired by a race committee for the occasion, to which all persons had entrance on paying a small sum at the gate of the field, are public races within the exemption in the 6 Geo. 4, c. 81, s. 11, and a licensed victualler is not liable to any penalty for selling beer by retail in a booth in such field during such races by virtue of his ordinary license, and without having an occasional excise license for that purpose. *Boughey v. Rowbotham*, 15 W. R. 75; 15 L. T. (N.S.) 222—Exch. If a licensed ale-house has additions made to it, it does not follow that the occupier must give the notice provided for by 9 Geo. 4, c. 61, s. 10, as "for a house not theretofore kept as an inn." It is a question of fact for the justices, whether by such additions the house has become a new house. *Reg. v. Smith*, 15 L. T. (N.S.) 178, Q.B. The 25 & 26 Vic. c. 22, s. 11, abolishes the right by custom, prescription, or charter to sell beer at fairs without an excise or retail license. *Huxham v. Wheeler*, 3 H. & C. 75.

[1] An information was preferred against a licensed seller of beer by retail, not to be drunk on the premises, for selling beer on his premises contrary to the statutes, 4 & 5 Will. 4, c. 85, s. 4, and 3 & 4 Vict. c. 61, s. 13. It appeared that a constable tapped at a window of the defendant's premises, which were about three yards from the highway, and upon its being opened by the man in charge of the house, asked him for a pint of beer. The beer was handed in a mug to the constable, who drank part of it, standing as close to the window as he could, and the remainder while sitting on the window-sill. The window was open all the time and the attendant present:—*Held*, that there was not sufficient evidence to justify the magistrates in convicting the defendant. *Deal v. Schofield*, 37 L. J. M. C. 15. By 30 & 31 Vict. c. 142, s. 4, no actions shall henceforth be brought or be maintainable in any court to recover any debt or sum of money alleged to be due in respect of the sale of any ale, porter, beer, cider, or perry which, after the commencement of the Act (1st of January, 1868), was consumed on the premises where sold or supplied, or in respect of any money or goods lent or supplied, or of any security given, for, on, or towards the obtaining of any such ale, porter, beer, cider, or perry.

[2] An alien who has served on board a British man-of-war for four years in time of

I. *Pendente lite*, and Proceedings connected with.[1]

II. Permanent, and Proceedings connected with.[2]

war, is a natural-born subject, under 13 Geo. 2, c. 3, *Giraud, In re*, 22 Beav. 385.

[1] The court may at any time during the progress of the trial make an order for the payment of alimony by the husband, and the wife is not debarred of this right by having obtained a protecting order. *Hakewill v. Hakewill*, 30 L. J. M. & P. 254. And until the order for alimony is made the husband is liable for necessaries supplied to the wife. *Hayward v. Hayward*, 28 L. J. id. 9; M. & P. The Court will stay a suit for divorce by the husband until he has made a suitable provision for the wife *pendente lite*, although he may have no fixed income. *Moss v. Moss and Bush*, P. & M. 15 W. R. 532. Even though she is undergoing a sentence of imprisonment for felony she is, nevertheless, entitled to alimony *pendente lite*. *Kelly v. Kelly*, 32 L. J. Mat. Cas. 181; 11 W. R. 958. In allotting alimony *pendente lite* the wife must be considered as innocent. *Smith v. Smith*, 32 L. J. Mat. Cas. 91; 11 W. R. 257. Her omission to file an answer to a petition charging her with adultery is no ground for refusing to allot alimony or allotting less than the usual amount. *Ib.* Nor is she disentitled to alimony by the fact that in an *exparte* examination of witnesses *de bene esse* before the court the husband may have proved the wife's adultery. *Phillips v. Phillips and Medlyn*, 34 L. J. (N.S.) 107; P. & M. *See Whitmore v. Whitmore*, 35 L. J. P. & M. 39. Alimony *pendente lite* refused to a wife, who, for some time before the institution of the suit, had been and still was supporting herself in service. *George v. George*, 37 L. J. P. & M. 17. Where a husband had no property, except a legacy of £500, not payable until eleven months after the application for alimony, the court refused to allot alimony *pendente lite*. *Brown v. Brown and Simpson*, 3 S. & T. 217. So order refused, on the ground that the wife was shown to have been given by her husband since the commencement of the suit a sum sufficient for her support pending suit. *Coombs v. Coombs*, L. R. 1 P. & D. 218. Nor when the result would be to place her in a better position than she was when living with her husband. *George v. George*, 17 L. T. (N. S.) 152. Or where she has a separate income sufficient for her position in life. *Blackburn v. Blackburn*, 36 L.T. P. & M. 88. Allegation by a husband, in answer to a petition for alimony, that the wife had taken from his house, furniture, &c., of the value of from £800 to £1000. The court refused to make any order for alimony *pendente lite* on such a state of things, the wife declining to accept the sum offered by the husband, but allowed the wife to reply to the allegation in the answer. *Bremner v. Bremner and Brett*, 3 S. & T. 249. And where a husband, in his answer, alleged that he was in insolvent circumstances, and that his only income was of weekly wages, meat, drink, washing, and lodgings, and 4*s.* a-week, the court refused to allot alimony *pendente lite*. *Capstick v. Capstick, Furness, and Winder*, 33 L. J. Mat. Cas. 105. *Ford v. Ford*, 16 L. T. 595. Upon the allotment of alimony, if a husband has contracted to pay off a debt by annual instalments, the amount of each instalment may be deducted from his annual income. *Patterson v. Patterson*, 33 L. J. P. & M. 254. It is not sufficient to specify the amount of net annual income derived from trade in an answer to a petition for alimony. The gross annual income, and the deduction, must be specified. *Nokes v. Nokes*, 12 W. R. 443. It is also necessary to specify the gross rental of houses from which income is derived, and to give particulars of the charges and outgoings, in respect of which deduction is claimed. *Ib.*

The circumstance that a husband has to maintain several children, the issue of a former marriage, is no ground for allotting less than one-fifth of his income as alimony *pendente lite*. *Hill v. Hill*, 10 Jur. (N. S.) 371; 33 L. J., Mat. Cas. 104.

When a cause is heard before the court itself, alimony *pendente lite* ceases on the decree *nisi* being pronounced. *Wells v. Wells and Hudson*, 10 Jur. (N. S.) 755; 33 L. J., Mat. Cas. 151; 10 L. T. (N. S.) 696.

The answer to a petition for alimony should state what husband's income has been for last three years preceding the suit. *Williams v. Williams*, 37 L.J., P. & M. 39; 1 L. R., P. & D. 370:—*Semble*, expense of petition may be saved by voluntary offer of allowance. 17 L. T. 268; 37 L. T., P. & M. 4.

[2] Where the Divorce Court has made an absolute order for dissolution of marriage, and an order for permanent alimony, and the late husband is dissipating his property, or putting it out of his power, a court of equity will grant an injunction and receiver to protect it for the benefit of the former wife. *Sidney v. Sidney*, 17 L. T. (N. S.) 9. The petitioner, after a decree *nisi* had been granted in her favour, applied to the Court by a further petition for a permanent allowance under the 20 & 21 Vict. c. 85, s. 32. This last petition was presented in compliance with the directions of the 95th and following rules, which, together with others, were issued in December 1865, under the sole authority of the Judge Ordinary. It was objected that those rules were invalid, as having been authorized by the Judge Ordinary alone, and not by the majority of the Judges of the Court for Divorce, and that the 95th and following rules were erroneous, because the word "decree" in section 32 of 20 & 21 Vict. c. 85, meant the decree *nisi*, and not the decree absolute:—*Held*, that as since the passing of 23 and 24 Vict. c. 144, the Judge Ordinary can exercise all powers

III. Payment, and Enforcing Payment of.[1]

ALKALI Works, Act Regulating. 26 & 27 Vic. c. 124. Made perpetual by 31 & 32 Vic. c. 36.

ALLOTTEE. *See* Joint Stock Company.

AMBASSADOR.[2] 1 Ab. 315.

AMENDMENT. 1 Ab. 323.

I. As to Parties to Suit.[3]

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and authority whatever, which could before have been exercised by the full Court, he is authorized to issue new rules; and that the words "such decree" in the 32nd section of 20 & 21 Vict. c. 85, mean the decree by which the marriage is dissolved, that is, the decree absolute; in which, therefore, the order for permanent allowance must be incorporated. *Charles v. Charles*, 34 L. J. P. & M. 17. Permanent alimony will not be increased in the ordinary ratio where the husband's increase of income arises from his employment in a country where the expenses of living are greater than ordinary. *Louis v. Louis*, 2 L. R. 1 P. & D. 230; 35 L. J. 92. A wife applied for permanent alimony on a decree for judicial separation by reason of cruelty. The husband stated on affidavit that, since the petition for alimony *pendente lite* an answer had been filed, he had parted with his business (which was the principal source of income) for a yearly payment of £300 for seven years, and five per cent on the value of warehouse, stock-in-trade, debts, &c. The court held, that, in allotting alimony, the £300 yearly must be taken as income, observing that if the income really failed the husband could apply for reduction of alimony. *Moore v. Moore*, 11 L. T. (N. S.) 459, D. C.

[1] An order for the payment of alimony to the wife's solicitor or proctor will not be made except upon the written application of the wife. When alimony is so paid, the solicitor is not entitled to charge for receiving it. *Margetson v. Margetson*, 36 L. J. P. & M. 80. *Brown v. Brown*, 34 L. J. P. & M. 102. The only apparent income of the husband being a rent-charge payable to trustees, but it being altogether discretionary with them what, if anything, they should pay the husband; the Court, on judicial separation at suit of the wife, decreed alimony to continue until the respondent satisfied the Court that payment of the rent-charge had ceased. The alimony not being paid, the Court granted a general sequestration against the goods of respondent, but refused a sequestration against the rent-charge in the hands of the trustees. *Clinton v. Clinton*, 1 L. R. P. & D. 215. Where there was a balance due from the petitioner (the husband) for alimony and costs, and there had been an arrangement between the parties, that the balance should be paid by monthly instalments of 20*l.*, and that an attachment should be granted against him to remain in the registry until he made default in payment of one of the instalments, the Court dismissed the petition, and decreed an attachment on the terms arranged. *Bremner v. Bremner and Brett*, 3 S. & T. 378; 33 L. J. P. & M. 202; 12 W. R. 444. The dismissal of a petition does not prevent the Court from enforcing, by attachment, the payment of alimony and costs previously ordered to be paid by the petitioner. (Ib.)

[2] An ambassador of a foreign state, accredited to the Queen, having no real property in England, and having done nothing to disentitle him to the privileges of such minister, cannot, while he remains officially, be sued in this country, although such action may arise out of commercial transactions by him here, and although neither his person nor his goods are touched by the suit. *Magdalena Steam Navigation Company v. Martin*, 2 El. & El. 94. But a Court of Equity may restrain a third party from handing over money in dispute to him. See 32 L. J. Ch. 155; 1 H. & M. 495. The certificate of an ambassador, under the seal of the legation, is evidence of the law as to a testamentary paper. *In Goods of Klingemann*, 3 S. & T. 18; 11 W. R. 218; 8 L. T. (N. S.) 172. As to the privilege of an attendant on a foreign sovereign while here, see *Campbell v. Mustapha Jey*. An ambassador domiciled in this country is not exempt from legacy duty: 1 H. & C. 12.

[3] Where a foreign bank sued in its corporate name, and the defendant pleaded that it was not a body corporate, the Court allowed the writ, and subsequent proceedings to be amended by inserting the name of the director as nominal plaintiff, it appearing that by the law of the country the bank was entitled to sue in his name. *La Banca Nazionale Sede Di Torino v. Hamburger*, 2 H. & C. 330. 8 L. T. (N. S.) 548. *See* 31 L. J. Ex. 100.

In an action against a husband for goods sold to the wife *dum sola*, it is not competent to the judge at Nisi Prius to amend the record by making the female a co-defendant. *Garrard v. Giubelei*, 13 C. B. (N. S.) 832, Ex. C. *Bolingbroke v. Kerr*, 14 L. T. (N. S.) 365. Nor has the judge of the sheriff's court in London power to amend a summons issued upon a judgment recovered in a plaint by a single woman, by adding the name of a man whom she had married subsequently to obtaining the judgment. *Reg. v. Pearce*, 9 Cox,

II. In Pleadings.[1]
III. In Record and Postea.[2]
IV. In Judgment.[3]
V. In Rules.[4]
VI. Costs.[5]
VII. In Divorce and County Courts.[6]

ANATOMISTS. *See* 2 & 3 W. 4, c. 75; amended 4 & 5 id. c. 26; 24 & 25 Vic. c. 96.

ANCHORAGE.[7]

ANCHORS, Act for regulating Sale of. 27 & 28 Vic. c. 27.

ANCIENT Windows. *See* Easements; Lights; Prescription.

C. C. 258; 9 Jur. N. S. 647; 32 L. J. M. C. 75; 11 W. R. 235; 7 L. T. (N. S.) 597, Q. B. Where an amendment at the trial merely consists in the correction of a statement of the contract, and does not vary the real question, the judge is warranted in allowing it without imposing any conditions. *Lusky v. Green*, 9 C. B. (N. S.) 370; 7 Jur. N. S. 394. The name of executors cannot be substituted for a deceased plaintiff. *Clay v. Oxford*, 36 L. J. 75; 15 L. J. (N. S.) 286; 2 L. R. Ex. 54.

[1] The discretion of a judge in refusing to allow a plea to be added will not be interfered with by the Court. *Speeding v. Young*, 16 C. B. (N. S.) 824. *See Podman v. Schmidt*, 17 id. 725; but the Court has the power to allow an amendment, although the judge at Nisi Prius has refused. *Cator v. Wood*, 19 C. B. 286.

An application to amend the postea should be made to the judge who presided at Nisi Prius, and not to the Court. *Smith v. Edge*, 33 L. J. Exch. 9. The Court, where leave is reserved to enter a verdict may amend record. *Cator v. Wood*, 19 C. B. 286.

[3] An action having been brought against one of two executors, who died, after the assizes, and before trial, the verdict was for the plaintiff, and the judgment was entered (*de bonis propriis*) within two terms afterwards; but error was brought by the defendant's executor, and the Exchequer Chamber altered the judgment by entering it *de bonis testatoris, et si non*, &c., instead of a judgment *de bonis propriis*. *Garton v. Hall*, 11 W. R. 281, Q. B. Every reservation of leave to enter a nonsuit carries with it an implied condition that the Court may amend the declaration if necessary in such a manner as to raise the real question in issue between the parties. *Indermaur v. Dames*, 14 W. R. 586, 589. But *See Cobbett v. Wood*, 2 F. & F. 405.

When a plea is in accordance with the construction put upon a statute by the judge at Nisi Prius, and leave is given to move the Court, it is not necessary to amend the plea by inserting the exact words of the statute. *Tulley v. Corrie*, 16 L. T. (N. S.) 796, Cockburn, C, J.

[4] A rule disposed of in one term cannot be amended in a subsequent term. 14 L. T. (N. S.) 340.

Where, on the trial of an action, the judge substituted the name of the person really intended to be sued instead of defendant on the record, and a verdict was entered for plaintiff, the Court, suspecting collusion between the original and substituted defendant, refused a motion to enter a verdict for the original defendant that he might get his costs. *Podmore v. Schmidt*, 17 C. B. (N. S.) 725.

[5] Where one of two defendants in an action of contract is struck out of the record, and the plaintiff obtains a verdict against the other, the course is, to tax the whole costs of the action on each side, and deduct from the plaintiff's costs a moiety of the costs of the defence. *Redway v. Webber*, 13 C. B. (N. S.) 254; 32 L. J. C. P. 84. *See* 30 L. J. C. P. 19.

[6] Leave has been given to amend a petition for dissolution of marriage in the Divorce Court by adding a claim for damages. *Bartlett v. Bartlett*, 34 L. J. P. & M. 64. Although the opposite party has only four days allowed (Rule 36) to amend his answer to an amended petition or answer, the Court may extend the time. *Hitchcock v. Hitchcock*, 37 L. J. P. & M. 40. A County Court judge has no power to amend an issue sent down under 19 & 20 Vict. c. 108, s. 26. *Bain v. Gregory*, 14 L. T. (N. S.) 601, Q. B.

[7] The maintenance of buoys and beacons (involving the expense of the foundations and cables to which they were attached), taken in connexion with the ownership of the soil of the anchorage ground, is sufficient consideration to support a claim for the payment of anchorage. *Company of Free Fishers v. Foreman*, 36 L. J. C. P. 273; *Same v. Gann*, 13 C. B. (N. S.) 853: 9 Jur. (N. S.) 1241; 32 L. J. C. P. 194; 11 W. R. 430; 9 L. T. (N. S.) 263, Exch. Cham. The right of the owners of the soil in an arm of the sea below low-water mark to anchorage tolls, maintained, on the ground that the parties claiming the right, had, during living memory, maintained buoys and beacons indicating the entrance to the anchorage ground. Every intendment ought to be made in favour of a payment which has been uninterruptedly received time out of mind, supposing it to be presumably capable of a legal origin. *Whitstable Free Fishers v. Foreman*, 2 L. R. 2 C. P. 688; 36 L. J. 273; 16 L. T. 747; 15 W. R. 1133. Evidence of mere immemorial usage will not sustain such a claim. Ib. A liability to make compensation for actual injury done to the oysters by anchoring, is not

ANCIENT Documents.[1] 1 Ab. 348.

ANIMALS. 1 Ab. 352; *See* valuable observations in L. J. N. C. 7 Sept. 1866, p. 493; *See* also Bills of Sale; Carrier; Cattle; Distress; *Fieri facias;* Horse; Warranty. As to Insurance of, *see* 29 & 30 Vic. c. 34.

I. Property in, p. 19.

II. Remedy for Injuries by or to, p. 19.

III. Cruelty to Animals, p. 21.

IV. Keeping Diseased and Infectious, p. 21.

I. Property in.[2]

II. Remedy for Injuries by or to.[3]

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to be confounded with a liability to toll for casting anchor in the soil itself. Ib. 37 L. J. C. P. Exch. 305.

[1] A copy of an old decree in Chancery establishing certain customs as against the lord of the manor found among the muniments of his ancestors was held to be admissible, and presumed to be correct against the successor on account of the place of deposit. *Price v. Woodhouse*, 3 Ex. 616; *sed vide* 20 L. J. Ex. 297; 8 Ad. & E. 314.

An agreement dated in 1698, purporting to be made between the then owner of N. and six persons described, as of T., in behalf of themselves, as of all the rest of the inhabitants of T., is admissible in a question of boundary to show that it was part of T. parish. *R. v. Mytton*, 2 E. & E. 557.

M., who was a tenant of a Corporation, brought an action against O. for entering his several fishery in a navigable river. At the trial, in order to prove ancient possession, M. gave in evidence an "Assembly Book" of the Corporation, containing entries showing that the fishery was let for certain rents to a tenant: —*Held*, that the book was admissible, for the rule is, that ancient documents, coming out of the proper custody, and purporting, upon the face of them, to exercise ownership, such as a lease or license, may be given in evidence without proof of possession or payment of rent under them, as being in themselves acts of ownership and proof of possession. *Malcolmson v. O'Dea*, 10 H. L. C. 593; 9 Jur. (N. S.) 1135; 9 L. T. (N. S.) 93 H. L. An unauthenticated MS. report of a trial 140 years ago ought not to be admitted in evidence. *Bridges v. Hyghton*, 11 L. T. (N. S.) 653.

[2] A grant of land in fee by the crown, and also a license to depasture cattle on crown lands (which is in substance a lease), carries with it the right to capture and appropriate all wild animals found on such land. *Falkland Islands Company v. Reg.*, 10 Jur. (N. S.) 807; 11 L. T. (N. S.) 9, P. C. Reclaimed animals feræ naturæ are the subjects of civil remedies; therefore, where a cat of A., strayed from his premises, and was killed by B.: —*Held*, that an action would lie to recover damages for killing it, the measure of such damages being something beyond the market value of the thing destroyed, if the destruction were attended by circumstances of aggravation. *Whittingham v. Ideson*, 8 U. C. L. J. 14. If a trespasser starts game in the land of A., and hunts it and kills it there, the property in such game vests absolutely in A., and not in the trespasser. *Blades v. Higgs*, 11 Jur. (N. S.) 701; 32 L. J. C. P. 182. *See post*, Game; Larceny.

[3] By 28 & 29 Vict. s. 1, the owner of every dog shall be liable in damages for injury done to any cattle or sheep by his dog, and it shall not be necessary for the party seeking such damages to show a previous mischievous propensity in such dog, or the owner's knowledge of such propensity, or that the injury was attributable to neglect on the part of such owner. Such damages shall be recoverable in any court of competent jurisdiction by the owner of such cattle, or sheep killed or injured. Where the amount of the damages claimed shall not exceed five pounds, the same shall be recoverable in a summary way before any justice or justices sitting in petty sessions under the provisions of the 11 & 12 Vict. c. 43.

By s. 2, the occupier of any house or premises where any dog was kept or permitted to live or remain at the time of such injury shall be deemed to be the owner of such dog, and shall be liable as such, unless the said occupier can prove that he was not the owner of such dog at the time the injury complained of was committed, and that such dog was kept or permitted to live or remain in the said house or premises without his sanction or knowledge.

An action lies against the owner of a dog, who *knowing* the animal to have a propensity for chasing and destroying game, permits it to be at large, and on plaintiff's land destroys young pheasants which are being reared under domestic hens. *Read v.*

Edwards, 17 C. B. (N. S.) 245; 11 L. T. (N. S.) 311; 34 L. J. C. P. 31. In order to establish the scienter, it was proved that the wife of the defendant (who was a milkman) occasionally attended to his business, which was carried on upon premises where he kept the dog, and that a person had gone there, and made a formal complaint to the wife, for the purpose of its being communicated to her husband, of the dog having bitten such person's nephew: — *Held*, that there was evidence of the husband's knowledge of the dog's propensity to bite. *Gladman v. Johnson*, 2 L. R. C. P. 313. But knowledge of the husband will not taken alone be sufficient proof of the scienter's to render the wife liable after her husband's death. *Miller v. Kimhay*, 16 L. T. 360. In an action for keeping a fierce and mischievous dog, which had bitten the plaintiff, it is necessary to prove that he has injured him, and is used to injure people, and a mere habit of bounding upon and seizing persons, not so as to hurt them, though causing some trivial accidental damage to clothes, would not sustain the action. The dog may be brought into court, and shown to the jury to assist them in judging of his temper and disposition. *Line v. Taylor*, 3 F. & F. 731. *Sed vide Worth v. Gilling*, *infra*. A passenger by a steamboat company having gone to their premises for the purpose of inquiring for his luggage, was directed to other premises of the company; whither he went, and while there was bitten by a dog of the company, chained up round an angle of the building, so as to be previously out of sight of the passenger. The dog had, to the knowledge of persons in the employ of the company (but who had no control over their business, or authority with respect to the dog), previously bitten another person: — *Held*, that assuming the company to be aware of the dangerous nature of the dog, they were liable in damages, but that there was no evidence of scienter to maintain the action. *Stiles v. Cardiff Steam Navigation Company*, 10 Jur. (N. S.) 1199; 10 L. T. (N. S.) 844, Q. B.; 33 L. J. Q. B. 310.

Where a horse strays on a highway, and, without apparent reason, kicks a child, no action will lie against the owner of the horse, unless he knew that the horse was likely to commit such an act. *Cox v. Burbidge*, 9 Jur. (N. S.) 970; 32 L. J. C. P. 89; *See Hudson v. Roberts*, 6 Ex. 697; 20 L. J. Ex. 299. But if through the neglect of the owner in not keeping his fences properly repaired a horse strays out of the field in which it is feeding into the field of an adjoining occupier, and there gets amongst his horses, and kicks one as to cause its death, the owner is liable for the injury which his horse has done, and it is not a too remote consequence of the owner's negligence; neither is it incumbent on the plaintiff to show that the defendant knew his horse to be vicious. *Lee v. Riley*, 13 C. B. (N. S.) 437; 11 Jur. (N. S.) 527; 34 L. J. C. P. 212; 12 L. T. (N. S.) 388. *See Jackson v. Smithson*, 15 M. & W. 563; *Lynch v. Nurdin*, 1 Q. B. 29, and 10 Law J. Rep. (N. S.) Q. B. 73, in the latter case a horse and cart were left unattended in the street, and some children, of whom the plaintiff was one, began improperly and unlawfully to amuse themselves therewith. One of the children set the horse in motion, and the plaintiff fell off the cart under the wheel and was injured. The child in this instance contributed to the accident by his own wrongdoing, if a child of the tender age of six or seven can be said to be capable of negligence (*see* Infant, Negligence); whereas in *Cox v. Burbidge* there was certainly no evidence of contributive negligence. It is true that in *Lynch v. Nurdin* direct negligence was proved against the defendant for allowing his horse and cart to stand in the street without a keeper, and that in *Cox v. Burbidge* there was nothing to show how the horse strayed. See 1 L. J. N. C. 493. *Smith v. Great Eastern*, 36 L. J. C. P. 22.

To sustain an action for negligently keeping a ferocious dog, by which plaintiff was bitten, it is not essential to prove that the dog had previously bitten some person. It is sufficient to prove the dog being chained up, that he was in the habit of rushing out at passers-by, and attempting to bite them. *Worth v. Gilling*, 2 L. R. 2 C. P. 1. But where an action against a railway company for alleged negligence in omitting to keep their station free from a savage dog, it was proved that the dog, which was a stray one, had at 9 p.m. attacked a female on the platform, torn her dress, and then disappeared; that the attention of the company's servants was called to the fact; that the dog again appeared at 10 p.m., and attacked a cat in the signal box, when one of the porters kicked him out, he disappeared, but about 11 p.m. he returned to the platform and bit the plaintiff. There was a public right of way crossing at the end of the platform. *Held*, there was no evidence of negligence to sustain the action. *Smith v. Great Eastern Railway Company*, 2 L. R. 4; 36 L. J. 22.

A person entitled to right of common of pasturage, who turns out a vicious horse, known to the owner to have a propensity to kick; on a common crossed by paths, which horse kicks and kills a child *on or near* one of the paths, is guilty of culpable negligence, and liable to be convicted of manslaughter. *Reg. v. Dant*, 13 W. R. 663.

The 2d and 3d Vic. c. 47, s. 54, enacts that every person shall be liable to a penalty of 40*s.* who shall suffer to be at large any unmuzzled ferocious dog. The 62d section enacts that where any "hurt or damage" ensues through (among other things) the bite of a dog, to any person or property, the offender (in this case the dog's owner) may be apprehended, with or without warrant, by a constable; and if he shall not, upon demand, make amends for such hurt or damage, to the satisfaction of the person aggrieved, he shall be taken before a magistrate, and shall, upon conviction, be liable to pay a sum not exceeding 10*l.*, as compen-

III. Cruelty to Animals.[1] *See* 12 & 13 Vic. c. 92; 17 & 18 id. c. 60.

IV. Keeping Diseased and Infectious.[2] *See* Cattle.

ANNUITY.[3] 1 Ab. 360; as to small Government Annuities; *See* 27 & 28 Vic. c. 43.

APOLOGY for Libel in Newspaper. *See* Accord and Satisfaction, *ante*, p. 3, n. 4; Libel.

APOTHECARY. 1 Ab. 376. *See* Medical Practitioners.

APPEAL of Death. Abolished by 59 Geo. 3, c. 46.

APPEAL.[4] 1 Abr. 378. *See* also Particular Courts.

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sation to the person aggrieved, besides the penalty for the offence.

[1] By 12 & 13 Vic. c. 92, s. 3, every person who shall keep or use, or act in the management of, any place for the purpose of fighting any cock, or shall permit or suffer any place to be so used, is subjected to a penalty for every day he shall so keep, or use, or act in the management of any such place, or permit or suffer any place to be used as aforesaid: and every person who shall in any manner encourage, aid, or assist at the fighting of any cock, is made liable to a penalty:—*Held*, that a person does not incur this latter penalty by aiding and assisting at cock fighting in any place, but only if the place be one so kept or used for the purpose as to subject the keeper of it to the penalty imposed by the first clause of the section. *Clark v. Hague*, 2 El. & El. 281. *See Morley v. Greenhalgh*, 3 B. & S. 374; 9 Jur. N. S. 745; 32 L. J. M. C. 93; 11 W. R. 263; 7 L. T. (N. S.) 624.

A cock is a domestic animal, within the 2d and 29th sections. *Bridge v. Parsons*, 3 B. & S. 382; 9 Jur. N. S. 796; 32 L. J. M. C. 95; 11 W. R. 424; 7 L. T. (N. S.) 784. S. P. *Bates v. M'Cormick*, 12 Ir. Com. Law Rep. 577; 9 L. T. (N. S.) 174.

A conviction for using an unlicensed slaughterhouse under 10 & 11 Vic. c. 34, s. 126, cannot be sustained against a person who merely pays the owner of the premises for being allowed to kill animals there. *Reg. v. Heyworth*, 14 L. T. (N. S.) 600.

[2] The defendant's sheep, being diseased got into the plaintiff's field, where his sheep were grazing, and infected them with the disease. It did not appear how they got there. The defendant, on being told of it, used expressions indicating knowledge that his sheep were diseased. In an action against him for suffering his sheep to go at large,—*Held*, that in the absence of negligence, proof of a scienter was necessary, and there was no sufficient evidence of it. *Cook v. Waring*, 2 H. & C. 332. *See Mallett v. Mason*, 1 L. R. C. P. 559; 35 L. J. C. P. 299. *Post*, Cattle. The 30 & 31 Vic. c. 125, continues and amends the 11 & 12 Vic. c. 107; 16 & 17 Vic. c. 62; and 29 & 30 Vic. cc. 2, 25, 116, relating to the spread and prevention of contagious and infectious diseases among cattle and animals. *See* 31 & 32 Vic. c. 35.

[3] The 17 & 18 Vic. c. 91, repeals all the annuity acts, except as to transactions prior to 10th August, 1854. The 27 & 28 Vic. c. 3, grants additional facilities for the purchase of government annuities, and for assuring pecuniary payments on death. As to transfer, *see* 24 Vic. c. 3.

A contract to grant an annuity, in consideration of the discontinuance of cohabitation and of the release of an alleged promise of marriage, is enforcible in equity. *Keenan v. Handley*, 10 Jur. N. S. 906; 12 W. R. 1021; 10 L. T. (N. S.) 800, L. J.

To make the grant of an annuity void under the 53 Geo. 3, c. 141, s. 6, there must be such a return of consideration as to show that the transaction was merely colourable. *Foster v. Bonner*, 11 W. R. 742; 8 L. T. (N. S.) 530.

An annuity by will held not charged on corpus, but only on rents, profits, and accumulations, the property being given over in its entirety after the death of tenant for life. *Salvin v. Weston*, 35 L. J. Chanc. 552.

A proviso annexed to the grant of an annuity for its cessor on the annuitant, a married man, living apart from his wife, is void. *Nicholl v. Jones*, 36 L. J., Chanc. 554.

A surety who makes his estate liable for an annuity, although he incurs no personal obligation to pay it, is a grantor within 53 Geo. 3, c. 141, s. 10. *Thompson v. Cartwright*, 33 Beav. 178. Affirmed on appeal. 2 De G. J. & S. 10.

[4] It is an inherent prerogative of the Queen to exercise an appellate jurisdiction in all cases, civil and criminal. *Attorney-General of N. S. Wales v. Bertrand*, 36 L. J. P. C. 51. *Leven v. The Queen*, id. 62. But the creation of a new court of appeal can only be by statute, and it is essential to the limitation and extension of jurisdiction. *Attorney-General v. Sellam*, 10 H. L. 704.

Where a rule for a new trial is granted, and no leave to appeal given, no appeal to court of error lies. *Abbott v. Leroy*, 6 H. N. 113.

The court of ultimate appeal unwillingly overrules a series of decisions which have long regulated the settlement and devolution of property. *Young v. Robertson*, 4 Macq. H. L. Cas. 337. And before reversing the judgment below, must not merely doubt whether the judgment is right, but must be satisfied it is wrong. *The Schwalbe*, 4 L. T. (N. S.) 160 Priv. C.

APPEAL from Decision of Justices.[1]

from Order of Judge at Chambers. *See* Judge.

from Revising Barrister. *See* Elections.

APPEALS from County Courts. *See* County Courts.

A judge at chambers having in the exercise of his discretion dispensed with bail on appeal, on the ground that the question to be determined was a doubtful one, and had been decided by the Court in deference to a single authority, the Court refused to set aside his order. *Turquand v. Moss*, 17 C. B. (N. S.) 24.

Where a bill seeking an injunction has been dismissed, the Court has no jurisdiction to restrain the defendant during the plaintiff's appeal to the House of Lords. *Galloway v. Mayor, &c. of London*, 11 Jur. (N. S.) 537. Ch. on appeal; 12 L. T. (N. S.) 623.

A plaintiff obtained judgment in the Q. B., which was reversed on appeal by the Ex. Ch. On appeal to the House of Lords the judgment of the Ex. C. was reversed, and that of the Q. B. affirmed:—*Held*, that the plaintiff was entitled in the Q. B. to recover the costs of the proceedings in the Ex. Ch. *Peck v. North Staffordshire Railway Company*, 4 B. & S. 627.

Where a court of law has made an order, based on the *consensus* of the parties to the action, which is at variance with the ordinary rules of law, no subsequent proceedings founded on that order can be a proper subject of appeal. *White v. Duke of Buccleuch*, 1 H. L. L. R. 70. *See* id. 47.

Court of Appeal can only look to pleadings as amended below, and not to the original pleadings. *Indermaur v. Dames*, 36 L. J. C. P. (Exch.) 181.

When a party has obtained the common order to sue *in formâ pauperis* at any stage of the suit, it will carry him through all subsequent stages; and no special order is required to enable him to appeal without payment of a deposit. *Drennan v. Andrew*, 1 Law Rep. Ch. App. 300.

It is now established that on the hearing of all appeals, the appellant is to begin. *Williams v. Williams*, L. C. & L. J. 66; L. R. 2 Ch. Ap. 15. *Skelton v. Flanagan*, 15 Ir. Ch. Rep. 303. And on a criminal appeal the court only considers questions of law which shall have arisen on the trial of the prisoner, and not whether he ought to have been indicted differently on the same facts. *R. v. Clarke*, 36 L. J. M. C. 16; 15 L. T. 190. Therefore where a man was indicted for a misdemeanour and pleaded guilty, the court declined to consider whether he ought to have been indicted for felony. Ibid. Form of judgment of Court of Appeal in the plaintiff's favour where judgment for him has been given by the court below. *Reg.-Gen.*, Q. B.; C. P. & Exch., T. T. 1867.

Where a case reserved has been restated by order of the court, an application, supported by affidavit, to have it again restated will be refused. *Reg. v. Studd*, 14 W. R. 806; 14 L. T. (N. S.) 633—C. C. R.

[1] On the hearing of an appeal to the quarter sessions from the decision of the justices below, it is competent to the respondent to produce evidence in support of his case additional to that given before the justices. 35 L. J. M. C. 251.

Where the last of the three days allowed for an application to justices to state a case falls on a Sunday, it is to be computed as one of the days, and an application made on the Monday is too late. *Wynne v. Ronaldson*, 12 L. T. (N. S.) 711—B. C.

When the offices of the court are closed, it is a sufficient compliance with the statute to transmit it on the earliest day on which the offices open. *Mayer v. Harding*, 2 L. R. Q. B. 410.

The 20 & 21 Vic. c. 43, s. 3, does not require the appellant, on a special case stated by justices, to enter into a recognizance to prosecute the appeal, at the time of applying for the special case; it is sufficient if the recognizance be entered into before the special case is delivered out, although this be more than three days after hearing the information. *Stanhope v. Thorsby*, 1 L. R. C. P. 423; 35 L. J. (M. C.) 182.

In a case stated, the respondent did not appear upon the argument. The court decided in favour of the appellant:—*Held*, without laying down any general rule, but qualifying the decision in *Lee v. Strain* (5 Jur. N. S. 846; 28 L. J., M. C. 221), that the appellant was entitled to the costs of the appeal. *Wednesbury Local Board of Health v. Stephenson*, 10 Jur. N. S. 151; 33 L. J. M. C. 111; 9 L. T. (N. S.) 731—B. C.

Where a case was struck out, it not having been transmitted, and notice of it not having been served, the court refused to give costs against the appellant. *Conway v. Richardson*, 10 L. T. (N. S.) 853—Ir. Q. B.

On an appeal from justices, under 20 & 21 Vic. c. 43, the case was sent back to be restated, and ultimately judgment was given for the appellant, with costs. On the taxation, the master allowed to the appellant the costs of preparing the case beyond the fees allowed to the clerk of the justices by sect. 3, and schedule (A.), and also the costs of amending the case:—*Held*, that the taxation was right. *Glover v. Booth*, 2 B. & S. 807.

A party convicted by justices, on an information, applied to them for a case for a superior court. The case was delivered by the justices' clerk to the appellant's attorney on the 31st December, 1862, who gave notice of appeal and a copy to the opposite attorney; and on the 1st January, 1863, sent by post the original to his London agent, to

APPEALS to Quarter Sessions. *See* Quarter Sessions.

APPEARANCE in the Superior Courts.[1] 1 Ab. 389.

APPENDANT. *See* Appurtenant ; Common.

APPOINTMENT, Deed of, under a Power.[2] 1 Ab. 392.

APPOINTMENTS Illusory. *See* 11 Geo. 4 and 1 Wm. c 46.

APPORTIONMENT. 1 Ab. 393, 4 & 5 Wm. c. 22.[3] *See* Work and Labour.

APPRAISEMENT.[4]

APPREHENSION of Offenders. 24 & 25 Vic. c. 96, s. 103. *See* Constable.

APPRENTICE. 1 Ab. 397. 5 & 6 Vic. c. 9. As to protection of, see 14 & 15 Vic. c. 11 ; 24 & 25 id. c. 95–100, s. 26.

I. Of the Contract of Apprenticeship,[5] p. 23.

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be lodged in court. The London agent received the case the next day, but did not lodge it until the 10th :—*Held*, that the case had not been duly transmitted to the Court, according to the 20 & 21 Vic. c. 43, s. 3. *Banks v. Goodwin*, 3 B. & S. 548.

Where, upon an appeal, a conviction was quashed upon an objection which was not brought to the notice of the magistrates, costs were not given to the successful party. *Stinson v. Browning*, 12 Jur. N. S. 262—C. P.

[1] Although the 15 & 16 Vic. c. 76, binds married women as to appearance to process, its provisions do not apply to infants. *Jarman v. Lucas*, 15 C. B. (N. S.) 474; 33 L. J.; C. P. 108.

A writ specially indorsed was served upon a defendant on Friday, the 27th of March, the eight days for entering an appearance expired on Good Friday, the 3rd of April. *Held*, that the defendant was not bound to enter an appearance until the following Wednesday. *Mumford v. Hitchcocks*, 14 C. B. (N. S.) 361; 32 L. J., C. P. 168; 8 L. T. (N. S.) 282.

[2] An appointment of a fund being as to some of the objects clearly in excess of the power, and as to others impossible to define the class which might fall within it from those which must be without it, the Court held the whole appointment bad. *In re Brown's Trusts*, 1 L. R. Eq. 74.

[3] The Act applies either where the instrument creating the life interest, or where the lease in respect of which the apportionment arises, bears date after the statute. *Llewellyn v. Rous*, 2 L. R. Eq. 27; 12 Jur. N. S. 580; *see* also *St. Aubyn v. St. Aubyn*, 30 L. J. Ch. 917. *Bridges v. Bridges*, 33 L. J., C. P. 398.

Dividends declared by joint-stock companies subject to the Companies' Clauses Act, are not within the 4 & 5 Wm. 4, c. 22. *Maxwell, In re*, 1 H. & M. 610; but may be apportionable by terms of the deed on the days on which they were made payable. Ib. Interest payable on coupons to debentures, though payable half-yearly, accrues due *de die in diem*, and is therefore subject to apportionment. *Re Rogers' Trust*, 1 D. & L. 338.

Where a life estate was created by a settlement *anterior* to the statute, but the lease, reserving the rent (royalties, it being a mining lease), was made after the statute. *Held*, that the rent was apportionable between the tenant for life's representatives and the remainderman. *Llewellyn v. Rous*, 2 L. R. Eq. 27. *See Mills v. Trunper*, 1 L. R. Eq. 671 ; 14 L. T. (N. S.) 220.

[4] By 28 & 29 Vic. c. 96, s. 2, for and in lieu of the scale of the stamp duties chargeable under the title of Appraisement in the schedule to 55 Geo. 3, c. 184, the following scale of stamp duties shall be chargeable ; (that is to say,) where the amount of the appraisement or valuation shall not exceed 5*l.*, 3*d.*; where it shall exceed 5*l.* and not exceed 10*l.*, 6*d.*; where it shall exceed 10*l.* and not exceed 20*l.*, 1*s.*; where it shall exceed 20*l.* and not exceed 30*l.*, 1*s.* 6*d.*; where it shall exceed 30*l.* and not exceed 40*l.*, 2*s.*; where it shall exceed 40*l.* and not exceed 50*l.* 2*s.* 6*d.*; where it shall exceed 50*l.* and not exceed 100*l.*, 5*s.*; where it shall exceed 100*l.*

[5] A., a licentiate apothecary, covenanted to instruct B. in his art, in the best ways and means he could. At the time of the execution of the indentures A. kept an open shop for the compounding of the prescriptions of other practitioners, but he afterwards closed the shop to the public, and used it merely for the purpose of compounding medicines for his own practice, and ceased to be registered as an apothecary: —*Held*, not disqualified from teaching B. pursuant to his covenant. *Batty v. Monks*, 15 Ir. C. L. R. 388 ; 12 L. T. (N. S.) 832.

When an apprentice has absented himself, the jury can only give the real value of his services up to the time of action. *Russell v. Shinn*, 2 F. & F. 395. See *Lewis v. Pouchey*, 1 H. & C. 518. *Berri v. Howard*, 2 F. & F. 403.

If an apprentice is an habitual thief, the

II. Stamp,[1] and Return of Premium,[2] p. 24.

III. Jurisdiction of Justices of the Peace concerning Apprentices,[3] p. 24.

IV. Of Parish Apprentices,[4] p. 24. *See* 3 & 4 Wm. 4, c. 63. 7 & 8 Vic. c. 101.

V. Action on Indentures,[5] p. 24.

APPROPRIATION of Fund for Legacies. *See* Legacy.

APPROPRIATION of Goods Sold equivalent to Delivery. 1 Ab. 419.[6]

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master may discharge him; and charges of theft made to his father will be privileged, but the master will be liable in slander for false accusations made to third parties. *Cox v. Mathews*, 2 F. & F. 397.

While an apprentice is on trial there is no implied contract that the father should pay for his maintenance. *Harrison v. James*, 31 L. J. Ex. 248; 7 H. & N. 804.

By an indenture an infant, with the consent of his father, bound himself apprentice to a tradesman, "his executors and administrators, such executors or administrators carrying on the same trade or business, in the town of W.":—*Held*, that upon the death of the master the apprentice was bound to serve his widow, his executrix, whilst she carried on the same business in the same town, and that she was bound to teach the apprentice. *Cooper v. Simmonds*, 7 H. & N. 707; 31 L. J., M. C. 138; 5 L. T. (M. S.) 712; 7 H. & N. 707.

The indentures are only voidable on the apprentice attaining his majority, and if he intends to disaffirm them he must do so within a reasonable time after he arrives at twenty-one. *Wray v. West*, 15 L. T. (N.S.) 180.

[1] Where no premium is paid, duty is 2*s.* 6*d.* 16 & 17 Vic. c. 59, and *ad val.* on premium paid.

[2] As to a certificate of incapacity on account of ill health to entitle the father to receive back the premium. See *Derby v. Humber*, 2 L. R., C. P. 247.

[3] The justice has jurisdiction to determine between masters and their apprentices about wages, although the term of apprenticeship may have expired at the time of the hearing before the justice. *Reg. v. Proud*, 1 C. C. R. 71; 36 L. J., M. C. 62.

[4] An indenture of apprenticeship was executed, which purported to be between the guardians of the poor of the one part, and the apprentice's mistress of the other part; and in the operative part it witnessed "that the directors and acting guardians, by virtue of the act, did put," &c. The covenants by the mistress were made with the guardians, and by one of them she bound herself not to assign over the apprentice without the consent of the directors and acting guardians. The seal of the union was put to the indenture, subscribed by two justices:—*Held*, that by 3 & 4 Wm. 4, c. 63, s. 2, the indenture was rendered valid. *Reg. v. Isle of Wight (Guardians)*, 10 L. N. (N. S.) 370.

[5] It is a condition precedent to the liability of a master, on a covenant to teach an apprentice his trade, that the apprentice should be ready and willing to be taught by the master. *Rayment v. Minton*, 12 Jur. N. S. 435; 35 L. J. Ex. 153; 14 L. T. (N. S.) 367. Permanent illness before breach is an answer to an action for not serving. *Boast v. Frith*, 3 L. J. N. 239.

An expired indenture sometimes remains with the master and frequently with the apprentice; and after the lapse of several years, proof of search among the papers of the apprentice is sufficient to warrant admitting secondary evidence of its contents. *Reg. v. Hinckley*, 9 Jur. N. S. 1054; 32 L. J., M. C. 158; 8 L. T. (N. S.) 270, Q. B.; 3 B. & S. 885.

It is a good defence to plead to an action on a covenant in an apprenticeship deed, for not instructing an apprentice, that he would not be taught, and by his own wilful acts hindered and prevented the defendant teaching him. *Raymond v. Minton*, 1 L. R. Ex. 244; 34 L. J. 153.

The measure of damages for wrongful dismissal of an apprentice is the loss actually sustained by the specific breach of covenant complained of up to the time of action brought. *Parker v. Cathcart*, 17 Ir. C. L. R. 787, C. P.

[6] A. sold to B. a quantity of bricks for a specified sum, the sale being to indemnify B. against sums he had paid and had contracted to pay for A. exceeding the value of the bricks. A. gave a delivery-order for the bricks, and on B.'s agent going with such order to A.'s brick-field, he was shown a clump of bricks then ready for delivery, another clump in the course of formation, and he was told they should all be held for B., and delivered according to his order, after a distress for rent, which was then on the brick-field, had been satisfied. The distress remained until A. became a bankrupt; a portion was sold to satisfy the distress, and the remainder was taken possession of by B.:—*Held*, that there had been a sufficient appropriation of the bricks to pass the property in them to B. before A.'s bank-

APPROPRIATION of Payments. *See* Payment.

APPURTENANT, Appurtenances.[1] 1 Ab. 425.

ARBITRATION. 1 Ab. 427; *see* 14 & 15 Vic. c. 199; 17 & 18 id. c. 125; Railway, 22 & 23 Vic. c. 59; 25 & 26 id. c. 89, s. 72.

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II. Of Voluntary Submission, and making same a Rule of Court, p. 26.

III. Compulsory Submission by direction of Judge or Court, p. 26.

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(A) *Of the Stamp*, p. 29.

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I. Subject Matter of Reference,[2] Future Disputes,[3] and Staying Proceedings, p. 27.

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ruptcy. *Young v. Matthews*, 36 L. J., C. P. 61. *See Von Sobhe v. Pred*, 3 L. J. N. C. P. 228.

[1] Land cannot be appurtenant to land, and the word "appurtenances" only includes incorporeal hereditaments attached to the land, granted or demised, such as rights of way, of common, &c., but does not include additional lands. *Lister v. Pickford*, 34 Bea. 576. *See Smith v. Ridgway*, 35 L. J. Ex. 198. *Brookes v. Stanford*, Cro. Eliz. 113.

[2] Where two public companies had entered into an agreement which was clearly *ultra vires*, and disputes which had risen thereunder had been agreed to be referred to arbitration, the court will interfere, at the instance of dissatisfied shareholders of the company, to restrain further proceedings under such agreement to refer. *Maunsell v. Midland Great Western Railway (of Ireland) Company*, 32 L. J. Ch. 513; 8 L. T. (N. S.) 247. *See Thornburn v. Barnes*, 36 L. J., C. P. 184.

[3] In a contract between the W. Ry. Co. and a contractor for certain works connected with the railway company it was provided that all disputes should be referred to J. F. T. as sole arbitrator, "if and so long as he shall continue to be the company's principal engineer." Subsequently the W. Ry. Co. was, by an Act of Parliament, amalgamated with and merged in the N. B. Ry. Co., and all rights and liabilities were transferred to the N. B. Ry. Co. J. F. T. continued to be the principal engineer on what had been the W. Ry., but he was not the principal engineer of the N. B. Ry. Co.:—*Held*, that J. F. T. continued to be the proper referee under the contract. *In re the Wansbeck Railway Company and Trowsdale*, 1 L. R.,

II. Of Voluntary Submission and making the same a Rule of Court.[1]

C. P. 3 9.[2] See *Parkes v. Smith*, 15 Q. B. 297.

A written agreement that in case of future disputes arising touching the matters named, such disputes shall be referred to such member of a particular firm as that firm shall appoint, subject to the provisions of 17 & 18 Vic. c. 125, s. 17; and upon disputes arising, the firm appoints in writing one of their number:—*Held*, this was a sufficient submission in writing to be made a rule of court. *Willcox v. Storkey*, 1 L. R. C. P. 671. *See Ex parte Glaysher*, 34 L. J. Ex. 41.

Where parties agree in writing that future disputes arising between them in reference to the matters named, they shall be referred to arbitration, and one of the parties commenced an action, it is no answer to an application under 17 & 18 Vic. c. 125, s. 11, to stay proceedings that the question was one purely of law upon the construction of the agreement; or that a cross claim was a subject only for a separate action. Fraud, it seems, is the only sufficient answer to the application. *Rundegger v. Holmes*, 1 L. R., 1 C. P. 679; *Seligman v. Le Boutillier*, 1 L. R. C. P 681. *See* id. Chanc. 84. *See* 1 L. R., C. P. 269. *Garrett v. Salisbury and Dorset Junction Railway Company*, 12 Jur. N. S. 495, L. J.

By the rules of a benefit building society it was provided "that the board of management for the time being should determine all disputes that might arise respecting the construction of the rules, &c., between the board and any member, and if their decision should be unsatisfactory, then to be referred to arbitration":—*Held* a "dispute" within this rule so as to disentitle a member to bring an action. *Wright v. Deley*, Ex. 4 Hurl. & C. 209.

In a policy it was declared that the capital stock of the company should be subject and liable to pay, &c., to plaintiff any loss not exceeding the sum named "according to the exact tenour of the articles thereunto subjoined." To an action on the policy for the full amount the company pleaded that the assured should, within fifteen days, deliver a particular thereof, "which loss or damage shall immediately be paid in money," or the goods replaced, or buildings rebuilt, &c.; but in case any difference shall arise, such difference shall be submitted to arbitrators, whose award shall be final. Plaintiff brought his action without referring to arbitration, and the claim was not adjusted:—*Held*, on demurrer, that the stipulation to refer was a condition precedent to the action. *Elliott v. Royal Exchange Assurance Company*, 1 L. R. Ex. 237; 36 L. J. 129. *See Thornburn v. Barnes*, 2 L. R., C. P. 384; 36 L. J., C. P. 184. *Treduen v. Holmes*, 31 L. J. Ex. 398; 1 H. & C. 172. *See Haddon v. Roupell*, 9 C. B. 683. *Lee v. Hemmingway*, 15 Q. B. 305, n. *Parke v. Smith*, id. 207. *Collins v. Collins*, 26 Bea. 306; 28 L. J. Ch. 184.

A mere reference to valuers to fix value of property on a sale is not a submission to arbitration. *Boss v. Helsham*, 36 L. J. Ex. 20.

[1] The provisions of the Act of 1854, s. 11, with regard to staying proceedings do not interfere with the power of the Court of Chancery to stay proceedings. *Pickering v. Capetown Railway Company*, 1 L. R. Ch. 84; 13 L. T. (N. S.) 570. *See* 6 C. B. 526; 28 L. J. Q. B. 164.

An agreement to submit the affairs of a partnership to arbitration, and that the submission shall be made a rule of a court of common law, cannot be pleaded in bar to a suit in equity, seeking discovery. *Cooke v. Cooke*, 4 L. R. Eq. 77; 30 L. J. Ch. 480. The jurisdiction of the superior courts in such a case is not ousted by the provisions of the C. L. P. Act of 1854. Ib.

[2] An order of reference is made a rule of court by a side-bar rule, which is always *ex parte*. *Roberts v. Evans*, 6 B. & S. 4.

On motion to discharge a rule for making an order of reference with the enlargements of time indorsed thereon, the arbitrators may be ordered to appear before the master to be examined as to when the enlargements were made. *Roberts v. Evans*, 6 B. & S. 1. Such an order with the enlargements of time indorsed may be made a rule of court on an affidavit verifying the handwriting of the arbitrator to the indorsements, and the times when the enlargements were made. Ib.

If one of two parties wishes to make the submission a rule of court, but the submission is in the possession of the other party, who refuses to produce it, he must apply at chambers for an order to produce the submission before moving the court for a rule on a verified copy. *Gething v. Fotheringham*, 13 W. R. 96. *Bligh v. Cotton*, 12 id. 102.

Upon a submission between two (not being partners in trade), and a third person, where the agreement of reference is signed by one of them thus, "A. for self and B." on making the submission a rule of court, it must be shown by affidavit that A. had the authority of B. to sign for him. *Aldington and Hancox, In re* 15 C. B. (N. S.) 375.

Where parties to a deed covenant to refer disputes which may arise to arbitrators to be chosen by them, and on disputes arising, verbally appoint arbitrators, the submission is by parol, and, therefore, cannot be made a rule of court under 17 & 18 Vic. c. 125, s. 17. *Glaysher, Ex parte*, 3 H. & C. 442; 34 L. J. Ex. 41; 11 L. T. (N. S.) 638; 101 Jur. 1208.

Terms of submission may by consent be extended by an indorsement on the judge's order, and an award relating to them enforced by action. *Lievesley v. Gilmore*, 35 L. J., C. P. 351.

The 17th section of the C. L. P. A. 1854 provides for the making agreements or submission rules of court unless a contrary intention of the parties appear; the clause is

III. Of a Compulsory Submission by Judge or Court.[1]

IV. Construction and Effect of Submission.[2]

V. Amendment and Revocation of Submission.[3]

VI. Of the Arbitrators.[4]

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not retrospective. *Re Lord Fitzwilliam and Dawes*, 4 L. T. (N. S.) 508, Q. B.

In a lease there was a provision that in case of future disputes the lessor should appoint one arbitrator and the lessee another, and, that on the failure of either for a certain time to make an appointment, the disputes should stand referred to the one named; also provision, that the submission and award might be made a rule of court. The lessor appointed an arbitrator by writing, signed by him; the lessee failed to appoint one:—*Held*, the award of the lessor's arbitrator could be made a rule of court. *In re Newton*, 19 C. B. (N. S.) 342.

[1] In an action on a contract the writ was indorsed for work and labour, and a compulsory order to refer to the master was obtained. Defendant set up, by way of defence, that he was induced to make the contract upon certain terms with which the plaintiff had failed to comply:—*Held*, that the question was within the province of the master. *Trickett v. Greene*, 11 Jur. N. S. 1037; 13 L. J. (N.S.) 405; 1 H. & R. 63; 35 L. J., C. P. 69.

In an action on an attorney's bill, a dispute as to items, and a defence on the ground of negligence may be compulsorily referred, it not being made to appear that the defence of negligence was so distinct as that it ought to be tried by a jury. *Reece v. Chaffers*, 7 L. T. (N. S.) 781, C. P. And where plaintiffs' claim consisted of matters of mere account, which could not be conveniently tried by a jury, and partly in respect of commission, which plaintiffs had paid defendant for orders for goods, and which plaintiffs sought to recover back, on the ground that such orders were fictitious:—*Held*, that a judge had jurisdiction, under section 3 of the Act, 1854, to refer the case compulsorily. *Imhof v. Sutton*, 36 L. J., C. P. 130. *See Clark v. Ware*, 17 L. T. 144; 2 L. R., C. P. 406. If a judge, under 17 & 18 Vic. c. 125, s. 3, refers a cause compulsorily, "costs of the cause to abide the event, costs of the reference to be in the discretion of the master," and the master certify for not more than 20*l.*, and direct the costs of reference to be paid by the defendant, plaintiff is prevented by 13 & 14 Vic. c. 61, s. 11, from recovering such costs. *Moore v. Watson*, 36 L. J., C. P. 122.

[2] A contract contained a clause that the engineer for the time being should have power to make such additions to or deductions from the work as he might think proper, and to make such alterations and deviations as he might judge expedient during the progress of the work; and if by reason thereof he should consider it necessary to extend the time for the completion of the work; or otherwise, the time of completion should be deemed to be not extended; and that the value of all such additions, deductions, alterations, and deviations, should be ascertained and added to or deducted from the amount of the contract price:—*Held*, that the ascertainment of the value of the extra works was a condition precedent to the right of the contractors to maintain their action. *Westwood v. Secretary of State for India*, 11 W. R. 261; 7 L. T. (N. S.) 736, Q. B. And that the defendant having by his own act rendered the performance of the contract impossible within the stipulated time, was not entitled to set off the penalties, although there had been no extension of the time for completion by the engineer. *Ib.*

A policy of assurance subject to a rule. Should the committee or the assured be dissatisfied with the adjustment, they may refer the same to two professional average-staters, or to two other competent persons, with power to such two persons to appoint an umpire, the award of such two persons shall be final:—*Held*, that no action could be maintained on the policy for a total loss until the claim had been adjusted and settled by arbitration, in pursuance of the rule. *Tredwen v. Holman*, 1 H. & C. 72.

[3] The court will not allow an amendment so as to introduce a new cause of action, where a cause has been referred by consent. *Smurthwaite v. Richardson*, 15 C. B. (N. S.) 60. *See* 3 L. R. C. P. 252.

Where an arbitrator erroneously refused to require the plaintiff to produce his books, the court, before award, ordered that the arbitrator's authority should be revoked, unless the plaintiff allowed the defendant to open and look at the books. *Hart v. Duke*, 9 Jur. (N. S.) 119; 32 L. J. Q. B. 5.

A plaintiff agreed with the defendant to empty a millpond for 5*d.* a cubic yard of mud, the admeasurement to be settled by N.; and if any dispute arose, the dispute to be referred to N., to be by him decided:—*Held*, that although the former part of the agreement was not revocable, the latter was. *Mills v. Bayley*, 2 H. L. C. 36; 9 Jur. (N. S.) 499; 32 L. J., Exch., 179; 8 L. T. (N. S.) 392.

[4] Where an arbitrator made his award subject to the opinion of another:—*Held*, that this was a substituted judgment, and the award therefore bad. *Ellison v. Bray*, 9 L. T. (N. S.) 730.

A railway company entered into a contract, one of the terms of which was that T., "if and so long as he shall continue to be the company's principal engineer," should be the arbitrator as to matters in difference. Afterwards the company was amalgamated with another railway company. Disputes having arisen between the parties to the

VII. Of the Umpire.[1]

VIII. Of the Proceedings incident to a Reference.[2]

contract, T. made two awards as to the subject-matter of it:—*Held*, that T. was still the proper person to make the awards. *Re The Wansbeck Railway Company v. Trowsdale*, 12 Jur. (N. S.) 704, C. P.

Where there are no particulars as to the action, the arbitrator may allow new ones to be produced, claiming a greater sum than the demand originally made. *Hammond v. Kerby*, 17 L. T. C. P. 147.

As to the time of making the award, an arbitrator enters on a reference, not when he accepts the office or takes upon himself the functions of arbitrator, but when he enters into the matter of the referees. *Baker v. Stephens*, 2 L. R. Q. B. 523; 36 L. J. Q. B. 236.

Misconduct in arbitrator is ground for objecting to the award, by motion to set it aside or to refer it back to the arbitrator, but it cannot be pleaded to an action on the award or by way of replication to a plea relying on the award. *Thornburn v. Barnes*, 36 L. J. C. P. 184; 16 L. T. 10.

In an arbitration after the last meeting had been held, the two arbitrators, the umpire, and the attorney of W. (one of the parties), dined with W. at his invitation, the umpire having afterwards made his award in favour of W.:—*Held*, that although this proceeding was improper, it was not sufficient ground for setting aside the award, as it did not appear that there was any intention to corrupt the umpire, or that he had been influenced. *Hopper, in re*, 2 L. R. Q. B. 367; 36 L J. Q. B. 97.

It is a matter entirely in the discretion of an arbitrator, whether he will or not postpone the reference, to give an opportunity of bringing a material witness from abroad. *Gnider v. Curtis*, 14 C. B. (N. S.) 723. An arbitrator has no power over the issues, his duty is limited to deciding on the specified matters referred to him. *Sowdon v. Mills*, 30 L. J. 175, Q. B. See *Henning v. Parker*, 14 W. R. 328.

[1] 17 & 18 Vic. c. 125, s. 25, and 26, id. c. 89, s. 162, only provides for the appointment of an umpire by the Board of Trade, where one of the parties is a railway company, where neither party is there is power for a judge to appoint an umpire under section 12 of the first Act. *In re Anglo-Italian Bank and De Rosaz*, L. R. Q. B. 452.

In order to bring a reference to arbitration within the 13th section of the Common Law Procedure Act, so as to entitle the party who names an arbitrator, the other party failing to do so, to name him sole arbitrator, there must be an actual difference between the parties. *Collins v. Collins*, 26 Beav. 306; 28 L. J. 194. *Bos v. Helsham*, 2 Ex. 72; 36 L. J. 20.

Before an award is made, the arbitrators and umpire ought to meet to discuss the question submitted to them, and there should be a joint judgment. *Morgan v. Bolt*, 7 L. T. (N. S.) 671. But where two arbitrators appointed an umpire by lot, and the parties to the reference, upon being told who had been appointed, and the mode of appointment, raised no objection, and approved of the person appointed, who made his award:—*Held*, not entitled to have the award set aside upon the ground of irregularity. *Blyth and Tyne Railway Company, In re*, 11 W. R. 705, B. C.

Under 11 & 12 Vic. c. 63, s. 125, arbitrators may appoint an umpire after the twenty one days within which they are required to make their award have elapsed, and may do so without enlarging the time for making the award. *Holdsworth v. Barsham*, 32 L. J. Q. B. 289; 8 L. T. (N. S.) 434; 4 B. & S. 1.

When an umpire has once been summoned, the jurisdiction of the arbitrators is gone; and the court, in referring back the award, will send it to the umpire. *Westminster and Brymbo Coal and Coke Company v. Clayton*, 11 L. T. (N. S.) 366.

The appointment dates from the time when he is appointed by the arbitrators, and not from the time when the duty of determining devolves upon him by reason of the arbitrators disagreeing. *Killett and Tranmere Local Board of Health, In re*, 13 W. R. 207. An umpire, immediately upon his appointment, may enlarge the time for making his award. Id.

The choice of an umpire by lot does not make the appointment of the umpire bad, both arbitrators having agreed that both the persons named were fit and proper persons to be appointed. Nor is such appointment bad in consequence of the two arbitrators not signing at the same time. Although the conduct of an umpire may be objectionable, the court will not set the award aside on that ground, there being nothing to show any intention to corrupt or influence the mind of the umpire, or that the mind of the umpire was at all influenced or corrupted. *In re Hopper*, 36 L. J. Q. B. 97; 2 L. R. 367.

An agreement of reference in an appeal against a poor-rate, contained a clause enabling the arbitrators, at the request of either party, to state a case, to be settled by an umpire, for the opinion of the court. The court refused to interfere, the appellants having had the opportunity of getting a case stated; and, instead of doing so, had taken their chance of getting the umpirage made in their favour. *London Dock Company, In re*, 32 L. J. Q. B. 30.

[2] It is not absolutely necessary that the evidence should be taken on oath; the parties may waive it. *Wakefield v. Llanelly*, 34, Bea. 245.

No custom or usage can justify an arbitrator or umpire in deciding on evidence laid before him without the knowledge of the party against whom he decides, and

IX. Enlarging Time for making Award.[1]

X. Of the Award.

(A) *Of the Stamp.*[2]

(B) *Contents and Form of.*[3]

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without giving him an opportunity of being heard. *Brook, Del Comyn, and Badart, In re*, 15 C. B. N. S. 403; 10 Jur. N. S. 704; 33 L. J. C. P. 246; 10 L. T. (N. S.) 378. See *Henning v. Parker*, 13 L. T. 745.

The 17 & 18 Vic. c. 34, is not available to compel the attendance of a person in Ireland as a witness before the Master of the Court upon a compulsory reference. *O'Flanagan v. Geoghegan*, 16 C. B. (N. S.) 636; *Tidswell, In re*, 33 Beav. 213; 10 Jur. (N. S.) 146.

In the Court of Chancery, an order for the attendance of witnesses before the arbitrator is an order of course. *Ricketts, In re*, 9 L. T. (N. S.) 405.

Upon a reference of an action on a builder's bill to the Master, he may appoint a surveyor to report as to value, but he must receive the report in the same way as other evidence, and cannot refuse to hear any additional proofs tendered by the parties. *Gray v. Wilson*, 35 L. J. 123; 1 L. R. C. P. 50; *Trachsell v. Wilson*, 11 L. T. (N. S.) 713, Exch.

A party who attends before an arbitrator under protest, cross-examines his adversary's witnesses, and calls witnesses on his own behalf, does not thereby preclude himself from afterwards objecting that the arbitrator was proceeding without authority. *Ringland v. Lowndes*, 17 C. B. (N. S.) 514, in error; 33 L. J. 337, C. P.; *Nare v. Drury*, 10 L. T. (N. S.) 305; 9 L. T. (N. S.) 479.

After one of the parties to a reference has failed to attend a meeting, the arbitrator may, at the next, without a peremptory appointment, proceed in his absence. *Angus v. Smythies*, 2 F. & F. 381.

An arbitrator does not necessarily misconduct himself by expressing an opinion on the subject-matter of a reference before formally entering upon it, even though such expression is made in writing, and is identical in terms with the award finally made. *Hutchinson v. Hayward*, 15 L. T. (N. S.) 291.

[1] An arbitrator, who has enlarged the time for making his award, may be required to verify the enlargement. *Roberts v. Evans*, 34 L. J. Q. B. 7; 11 L. T. (N. S.); 336 11 Jur. N. S. 321. On his refusal to do so, the court will make an order for his examination. Id. *Ward, In re*, 32 L. J. Q. B. 53.

An award bad, as being made out of time, is not cured by the party impeaching it not having attended the first of several meetings after the expiration of the period limited in the order of reference. *Dunstan v. Norton*, 13 L. T. (N. S.) 722, B. C.

The arbitrators appointed under a submission (with no power of extending the time for making the award), having made it after the time specified, the Court, under 3 and 4 Will. 4, c. 42, s. 39, and the C. L. P. Act of 1854, s. 8, enlarged the time and remitted the matter back to the arbitrators. *In re Warner*, 3 L. R. Eq. 261. *Lord v. Lee*, 37 L. J. Q. B. 121.

[2] By 28 & 29 Vic. c. 96, s. 3, in lieu of duties chargeable under the title Award in the Schedule to 23 & 24 Vic. c. 111, the following duties shall be chargeable: — For every award, where the amount or value of the matter in dispute shall not exceed 5*l.*, 3*d.*; where it shall exceed 5*l.* and not exceed 10*l.*, 6*d.*; where it shall exceed 10*l.* and not exceed 20*l.*, 1*s.*; and so in proportion till 1000*l.*; where it shall exceed 1000*l.* and also in all other cases not above provided for, 1*l.* 15*s.*

[3] It is necessary, where the submission does not require the award to be in writing, that the decision of the arbitrator should be evidenced by some external act. *Thompson v. Miller*, 15 W. R. 353, Ir. C. P. The test of the making of an award is the irrevocability of the decision. Id.

An award which leaves some of the questions undecided, or leaves in doubt whether some of the questions have been determined, cannot be enforced. *Wakefield v. Llanelly Railway and Dock Company*, 11 Jur. N. S. 456; 12 L. T. (N. S.) 509 L. J.

The court will not send back an award to arbitrators merely because their charges for making the award are excessive, and are calculated on a principle differing from that which either of the parties believed they would adopt. *Baker v. Stevens*, 14 L. T. (N. S.) 448.

Where certain specified matters in dispute and all matters in difference are referred to arbitration, the arbitrator is not bound to award separately what sum is to be paid in respect of any specific matter in dispute, unless it clearly appears from the submission that the parties intended that he should so find. *In the matter of an arbitration between Whitworth and Hulse*, 35 L. J. 146; 1 L. R. Exch. 251; 12 Jur. N. S. 652; 35 L. J. Exch. 149; 14 W. R. 736; 14 L. T. (N. S.) 445. *Harrison v. Lay*, 13 C. B. N. S. 528. See *Davies v. Price*, 34 L. J. Q. B. 8; 1 L. R. Ex. 251. See *Kandall v. Kandall*, 7 East. 81.

Action on an award by arbitrator appointed under 8 & 9 Vic. c. 18, s. 68, to assess compensation in respect of plaintiff's house being "injuriously affected." The arbitrator awarded that plaintiff had sustained damage by reason of his house being injuriously affected "by the erection of an embankment, and by the narrowing of the road in front of the house, to the amount of 80*l.*" Defend-

(C) *Effect of.*[1]

(D) *Remedies on, and Setting aside.*

(1) *By Attachment or by Rule for Payment of Money.*[2]

ants pleaded that plaintiff's house was not injuriously affected by the narrowing of the road, and that part of the 80*l.* was awarded in respect of that. On demurrer to this plea:—*Held*, the plea was good and the award bad, being for a lump sum, part of which was in respect of a claim that fails. *Beckett v. Midland Ry. Co.* 1 L. R. C. P. 241; 35 L. J. 163.

Where an award directs a lease to be made containing certain specific covenants, and it is alleged, on the part of the defendant, that the plaintiff has acted in contravention of the terms of the covenant since the date of the award, the court will, if the case is at all doubtful, order the leases to be antedated, so as to enable the defendant to rely on the alleged breaches at law. *Blackett v. Bates*, 2 H. & M. 610.

By a judge's order, a cause and all matters in difference were referred. The award, after reciting the order, professed to be made "of and concerning all the matters referred in the cause and under the order," and disposed of the issues in the action, and awarded that the defendants had no claim to certain bills accepted by the plaintiff, but was silent as to a claim by one of the defendants for money due to him for goods sold to the plaintiff, though such claim had been brought to the notice of the arbitrator:—*Held*, that the award sufficiently disposed of everything, as it amounted to an adjudication against the validity of such a claim. *Jewell v. Christie*, 36 L. J. C. P. 168; 2 L. R. C. P. 296; 15 L. T. (N. S.) 580. See *Lawrence v. Bristol and North Somerset Railway Company*, 16 L. T. (N. S.) 326.

An award is not necessarily bad because the arbitrator has taken evidence in the absence of both the parties. *Thomas v. Morris*, 16 L. T. (N. S.) 398.

Such an irregularity may be so treated by the disputants as to prevent them afterwards taking any objection to it. Id.

[1] A cause and other matters in difference were referred by order of nisi prius. The order contained no clause relating to the statement of a special case; but it provided that the parties should not bring error against him or each other. The arbitrator stated his award, as to the cause only, in form of a special case, and the court gave judgment thereon for the defendant:—*Held*, that the plaintiff could not bring error upon this judgment; the opinion of the court being merely an ancillary proceeding to the award. *Gumm v. Fowler*, 2 El. & El. 890.

A plaintiff had filed a bill against the defendant for infringing his patent, and for an injunction. The matter was referred to the arbitrator, decided by inference, but by inference only, that the plaintiff was the true and first inventor:—*Held*, in an action by the plaintiff, against the defendant, that the defendant was not estopped by such an award from denying that the plaintiff was the true and first inventor. *Newall v. Elliott*, 1 H. & C. 797; 11 W. R. 438; 7 L. T. (N. S.) 753.

A submission to arbitration, the appointment of arbitrators, and the making the submission a rule of court, the reference being still pending, does not oust the jurisdiction of a court of equity. *Cooke v. Cooke*, 1 L. R. 4 Eq. 77; 36 L. J. Ch. 480.

[2] The validity of an award must be decided by the court, of which the submission is made a rule; but when the award is once established, it may be enforced, either by an action in any court of law or by specific performance in equity. *Blackett v. Bates*, 11 Jur. N. S. 500; 34 L. J. Chanc. 515; 13 W. R. 736; 12 L. T. (N. S.) 844.

Where an umpire appointed under 11 & 12 Vic. c. 63, s. 125, awarded the amount of compensation and the costs of the reference should be paid by the local board of health:—*Held*, that the plaintiff was entitled to maintain an action for the costs before taxation. *Holdsworth v. Wilson*, 4 B. & S. 1; 10 Jur. (N. S.) 171. Ex. Ch. See *Lievesly v. Gilmore*, 1 L. R. C. P. 570; 35 L. J. C. P. 351.

To an action in an award under the Lands Clauses' Act, giving compensation, the Company may plead that the messuage was not injuriously affected. *Beckett v. Midland Rail. Co.* 1 L. R. C. P. 241; 1 H. & R. 189; 35 L. J. C. P. 163.

The court refused a rule for payment of money under an award, where it appeared that the costs (unascertained) of certain proceedings in Chancery were payable to the other party under the same award. *Lambe v. Jones*, 9 C. B. N. S. 478. Nor will the court make absolute a rule to pay money pursuant to an award, unless there has been personal service, or unless it is shown that it cannot be effected, because the party is keeping out of the way, to avoid service. An acceptance by the attorney of the defendant of the rule nisi, and a consent by him to its being made absolute, are not equivalent to personal service. *Evans v. Prosser*, 11 Jur. N. S. 182; 34 L. J. Q. B. 256; 11 L. T. (N. S.) 718. B. C.

Where a defendant had said that he would not pay under an award, a rule was made absolute for payment upon proof that it had been served by leaving it at his house, in the hands of his sister-in-law, who said that his wife was upstairs in bed, and that he had gone to America. *Styring v. Lloyd*, 12 W. R. 384. B. C.

Upon a motion for payment of money under an award, the court will only look to what appears upon the face of the award, and will not depart from this rule even on a suggestion of perjury. *Woollam v. Bradford*,

(2) *By Mandamus* (see *In re Morris*, 25 L. J. Q. B. 261) *and Specific Performance.*[1]

(3) *Referring back Matters to Arbitrator.*[2]

(4) *Setting aside Award.*[3]

10 Jur. N. S. 206; 33 L. J. Q. B. 129; 9 L. T. (N. S.) 731.

An action by a merchant against his broker was referred to arbitration, and there was an award in favour of the plaintiff for a balance on the accounts. To an action to enforce the award the defendant pleaded a set-off in respect of two acceptances of his on plaintiff's behalf which had not been pleaded in the former action, or mentioned on the arbitration:—*Held*, that he was entitled to do so, one of the acceptances not having fallen due at the time, and there being sufficient balance to overtop the other. *Baker v. Alexander*, C. P.; 35 L. J. 217.

By consent of both parties to an action, a judge's order was made, referring all matters of difference to an arbitrator, both parties to abide by, perform, and keep such award. Both parties afterwards endorsed on the order, that it was agreed that the arbitrator should have power to order what the parties or either of them should do to prevent a continuance or repetition of the injuries complained of. The arbitrator in his award, *inter alia*, ordered defendant to build a wall in a certain direction; defendant not having done this, held, plaintiff could enforce the award by action, the order and endorsement proving an agreement to perform what the arbitrator awarded. *Lievesly v. Gilmore*, L. R. 1 C. P. 570; 35 L. J. 351. See *Baker v. Alexander*, 35 L. J. C. P. 217.

It is no answer to a plea of an award to an action, that the arbitrator had not heard the plaintiff, it is only ground for applying to the equitable jurisdiction of the court to set the award aside. *Thornburn v. Barnes*, 36 L. J. C. P. 184.

[1] Although equity will decree a specific performance of an award or an agreement, it will not do so where part of the consideration from the plaintiff is the performance of certain future duties, which the court cannot enforce; but, *semble* if the award or agreement was, that a deed should be executed containing covenants to do those acts, the court would enforce it. *Blackett v. Bates*, 1 L. R. Ch. 117; 34 L. J. Ch. 515; 2 H. & M. 270.

[2] References to the master under the Common Law Procedure Act, 1854, stand upon the same footing with regard to applications to set aside or send them back for re-consideration as ordinary references. *Holloway v. Francis*, 9 C. B. (N. S.) 559.

Where an arbitrator had awarded a plaintiff less than 20*l.* in an action of contract, but by inadvertence had omitted to certify that the cause was fit to be tried before a judge of a superior court, the matter was sent back to the arbitrator for amendment at the expense of the plaintiff. *Cross v. Cross*, 13 C. B. (N. S.) 253. But the point must have been brought before the arbitrator. *Erskine v. Wallace*, 12 W. R. 134, B. C.

Where a submission gives an arbitrator power over costs, the court, on sending the award back to him, may direct that the costs of the rule shall be in his discretion. *Pearson v. Overell*, 12 W. R. 709. *Godfrey v. Broderick*, 14 Ir. Com. Law Rep. App. 33.

Under sects. 15, 17, and 18 Vic. c. 125, the three months' run from the time when the arbitrator really began to proceed with the reference after it is referred back. *Baker v. Stephens*, 36 L. J. Q. B. 236.

[3] Where in a compulsory reference a point was raised by the defendant, which the arbitrator refused to give any decision upon, and made his award in favour of the plaintiff, and the defendant then moved to refer the matter back, in order that he might be called upon, under sect. 5 of Act, 1854, to state a special case:—*Held*, that as no direct grounds for setting aside the award had been shown, the court would not indirectly set such award aside to enable the party to call upon the arbitrator to state a special case. *Baguelly v. Marthwick*, 4 L. T. (N. S.) 246, C. P.

After two terms motion cannot be made to set aside an award, even by *consent*. *In re North British Railway*, 35 L. J. C. P. 262; 1 L. R. C. P. 401.

Chancery will grant an injunction to restrain proceeding with a reference to arbitration, where, by the conduct of one of the parties, an equity has arisen which interferes with prosecuting the arbitration. *Pickering v. Cape Town Railway Company*, 1 L. R. Eq. 84 and 89.

An award set aside on the ground of its uncertainty in not awarding to whom and in what proportions a sum found due from one of the parties should be paid. *Re Tidswell*, 33 Beav. 213. *Wakefield v. Llanelly Railway and Dock Company*, 11 Jur. N. S. 456.

Where a submission does not contain an express agreement enabling the parties to make it a rule of court, the award is not brought within the provisions of the 9 & 10 Wm. 3, c. 15, by force of the 14 & 16 Vic. c. 76, s. 17, nor has the 12 & 13 Vic. c. 106, s. 32, this effect. *Smith v. Whitmore*, 1 H. & M. 576; 10 Jur. N. S. 65; 33 L. J. Ch. 218; 33 L. J. Ch. 713; 11 L. T. (N. S.) 169.

Where, in an award, it is directed that an act shall be done within a limited time, which is less than the time within which a motion to set aside the award, the party directed to do such act need not do it until the expiration of a reasonable time after he has obtained judgment in such motion. *Blackett v. Bates*, 2 H. & M. 610.

Action by landowner against railway company for not constructing an archway ac-

(5) *Pleading Submission and Award.*[1]

(6) *Cost connected with.*[2]

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cording to agreement. The action was referred. If arbitrator found for plaintiff arbitrator to direct what should be done to the archway. Arbitrator directed verdict for plaintiff, and what should be done by defendants to the archway, but said nothing as to damages. Plaintiff signed judgment for the damages claimed (less a sum taken out of the court) and costs. Rule absolute to reduce the damages to 1*s.* *Brown v. Somerset and Dorset Railway Company*, Ex. 34 L. J. (N. S.) 152.

The three months allowed by sec. 15, 17 and 18, *c.* 25, for making the award after the arbitrator shall have entered on the reference is to be counted from the time when the arbitrator enters actively on his duties; as commencing to hear the parties or one of them, under a peremptory notice. *Baker v. Stephens*, 2 L. R. Q. B. 523; 36 L. J. 236.

[1] The fact of plaintiff not having had any opportunity of being heard before the arbitrators is no answer to the plea of the award, but is only a ground for applying to the equitable jurisdiction of the court, to have the award set aside. *Thorburn v. Barnes*, 36 L. J. C. P. 184.

[2] Where there are certain unliquidated claims, and the costs of the cause and costs of reference are to abide the event, and the arbitrators award a sum beyond the question as the award in favour of one of the parties, he is entitled to the costs of the reference. *Dunhill v. Ford*, 37 L. J. C. P. 32; 3 L. R. C. P. 36.

Where a cause is referred and a verdict taken subject to a reference, costs of the cause to abide the event, the arbitrator to have power over the verdict; the plaintiff's right to costs depends on whether the sum awarded would have entitled him to costs if the jury had found a verdict for that amount. *Smith v. Edge*, 2 H. & C. 659.

If a judge, under 17 and 18 Vic. c. 125, s. 3, refers a cause compulsorily, "costs of the cause to abide the event, costs of the reference to be in the discretion of the master," and the master certify for not more than 20*l.*, and direct the costs of reference to be paid by defendant, plaintiff is prevented by 13 & 14 Vic. c. 61, s. 11, from recovering such costs. *Moore v. Watson*, 36 L. J. C. P. 122; 2 L. R. C. P. 314.

Where two employ an arbitrator, and one pays the fee to take up the award (there being no event entitling either party to costs), he may recover a moiety as for money paid to his use. *Masroch v. Webber*, 6 H. & N. 1. The arbitrator had fixed in the award the amount payable to himself, the court held the matter was too doubtful to grant a rule. *Threlfall v. Fanshawe*, 19 L. J. 334, Q. B. *See Parkinson v. Smith*, 30 L. J. 179, Q. B.

After issue joined, and before trial, the action was referred. The arbitrator found for the plaintiff, damages 20*s.*:—*Held*, that the plaintiff was deprived of costs by 13 & 14 Vic. c. 61, s. 11, and that the award by the arbitrator of damages was a recovery, within the meaning of that section. *Cowell v. Amman Aberdare Colliery Company*, 11 Jur. N. S. 687; 34 L. J. Q. B. 161; 12 L. T. N. S. 418, Q. B.

The plaintiff and defendant residing more than twenty miles apart, an action was brought in a superior court for 20*l.* It was referred to the master, the costs to abide the event. The master awarded 9*s.* 6*d.* to the plaintiff:—*Held*, that the plaintiff had recovered that sum and was entitled to his costs. *Webb v. Saunderson*, 8 L. T. (N. S.) 464, Ex. But a compulsory order containing a term that the costs of the cause to abide the event does not prevent the operation of the London Small Debts Act, which disentitles a plaintiff in such case, to costs, where an award on a contract is for less than 20*l.* *Robertson v. Sterne*, 13 C. B. (N. S.) 284; 9 Jur. N. S. 332.

An action of defamation was referred, and the costs of the cause were to abide the event, and the costs of the reference were to be in the discretion of the arbitrators. They found one of the issues in favour of the plaintiff with 20*s.* damages, and the other issues in favour of the defendant, and directed the defendant to pay all the costs of the reference, and the costs were taxed. On a motion to review the taxation, the court refused a rule. *Frean v. Sargent*, 32 L. J. Ex. 281; 8 L. T. (N. S.) 467.

Upon reference by a judge's order, of an action for breaches of an agreement, it was ordered that the costs of the reference should abide the event. The arbitrator found, as to one breach, that the plaintiff had sustained damages to the extent of 16*s.*, and on all other points substantially in the defendant's favour:—*Held*, that the plaintiff was not entitled to any costs of the reference, as the event was not in his favour. *Kelcey v. Stupples*, 1 H. & C. 576; 9 Jur. N. S. 256. And where a verdict was taken at the trial for 13*l.*, subject to a reference, the costs of the cause were to abide the event of the award. The arbitrator ordered that the verdict should be reduced to 2*l.* 16*s.* 1½*d.*:—*Held*, that the plaintiff was not entitled to costs, the reference having been after verdict given. *Smith v. Edge*, 9 Jur. N. S. 1300; 33 L. J., Exch. 9; 9 L. T. (N. S.) 445. *See* 6 L. N. & S. 333.

Where an umpire, appointed under sect. 125 of the 11 & 12 Vic. c. 63, awarded compensation, and generally that the costs of the reference should be paid by the local board of health:—*Held*, that the ascertaining the amount of such costs by taxation was not a

ARCHITECT.[1]

ARMY and Volunteers.[2] *See* Turnpike Roads, as to exemption from toll, *post*, p. 426.

ARMY Prize. *See* 27 & 28 Vic. c. 36.

ARMS (Grant of).[3]

ARRANGEMENT with Creditors. At Common Law and under Bankruptcy Acts, 1861–1868, *post*, p. 113.

ARRANGEMENT with Creditors under Bankruptcy Act 1869.[4] (32 & 33 Vic. c. 71).

Composition.[5]

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condition precedent to the right to bring an action for them. *Holdsworth v. Barsham*, 32 L. J. Q. B. 289; 8 L. T. N. S. 434, Ex. Ch. An award will not be sent back to arbitrator because his charges were excessive. 14 L.T. N. S. 448.

[1] The employer of an architect to prepare plans and a specification, and to procure a builder to erect premises, is not responsible for the accuracy of the bill of quantities furnished by the architect to the builder *Scrivener v. Park*, 18 C.B. N. S. 785; 1 L R. 715.

Under a builder's contract no claim to be made for extra work unless the written order of the architect be produced. Proportionate payments to be made on the certificate of the architect; the decision of the architect as to value to be final. The architect gave a certificate that a certain sum, which included extra and additional works, was proper to be paid:—*Held*, there being no fraud in the certificate of the architect, it could not be objected that there had been no sufficient order in writing by the architect. *Goodyear v. Mayor, &c. of Weymouth*, 35 L. J. 12. *See* 11 L. T. N. S. 565; 13 id. 396. Works were to be done for a certain sum, to be paid the plaintiff by the defendants on production by the plaintiffs of the certificate of the surveyor that the work had been efficiently performed. It is no ground of action that the surveyor had not given them such certificate, but had wrongfully and improperly neglected and refused so to do, and the defendants had not paid the money that would have been payable on such certificate. *Clarke v. Watson*, 18 C. C. N. S. 278; 34 L. J. C. P. 148.

[2] *See* Mutiny Act for 1866, 67, 29 & 30 Vic. c. 19; 1869, 32 & 33 id. c. 4. Prohibition will not be granted to a court martial, because the facts disclose an offence cognizable by the civil courts. *R. v. M'Carthy*, 14 W. R. 918.

In an action against a commanding officer for maliciously procuring the discharge of the plaintiff, a private, it appearing that the commanding officer had absolute power to discharge privates, and had so discharged the plaintiff, an amendment was directed, so stating the fact; and held that, there being reasonable ground for suspecting the plaintiff of felony, which had been committed, and the defendant having acted *bonâ fide*, he was entitled to the verdict. *Freer v. Marshall*, 4 F. & F. 485. Nor will an action lie for any proceedings purely military unless express malice be shown. *Dawkins v. Rokeby*, 32 L. J. 806.

The court granted an injunction to restrain the further use of a rifle range, which had been certified by the War Office, until it should have been rendered free from danger to the plaintiff, his family, and workmen. *Bannister v. Biggs*, 11 Jur. N. S. 276; 13 W. R. 378, R.

The 47 Geo. 3, sess. 2, c. 25, s. 4, which renders null an assignment of military pay or pensions, does not apply to assignments of pay, or pensions granted out of the revenues of India. *Carew v. Cooper*, 12 W. R. 198. See *Marsh v. Peacock*, 9 Jur. 789, N. J. 4 Giff. 419; 14 L. J. 382. Nor to the proceeds of the future sale of commissions. *The Earl of Suffolk v. Cox*, 36 L. J. Ch. 591. Pensions are to be applicable to creditors in Bankruptcy Act, 1869, s. 89.

A sum paid for the purchase of a commission in the army for a son is an advance within the meaning of the Statute of Distributions. *Boyd v. Boyd*, 4 L. R. Eq. 305; 36 L. J. Chanc. 877, V.—C. W.

[3] A grant of arms by the Herald College does not so exclusively belong to the heir of a deceased person as to enable him to maintain detinue against the devisee of all the testator's household goods and effects. *Stubbs v. Stubbs*, 1 H. & C. 257.

[4] Under the Acts of 1861 and 1868 dissenting creditors were bound by the assent of an acting majority after registration of a valid deed. Ss. 110 and 185 to 188 of the former allowed creditors at the first or any subsequent meeting to take a case out of bankruptcy by a resolution confirmed by the court. But now, by the 126th sect. of Act 1869, a preliminary meeting is made indispensable; and a special resolution of the statutable majority will, after registration, bind the minority.

[5] *Composition.* Under s. 126 the creditors of the debtor unable to pay his debts may, by extraordinary resolution, resolve that composition shall be accepted in satisfaction of debts, the resolution to be by a majority

Liquidation.[1]

ARREST in Civil Proceedings.[2] 1 Abr. 525. *See* also Absconding Debtors' Act, *ante*, p. 2.

ARREST of Judgment. 1 Abr. 251.

ARREST in Criminal Proceedings.[3] 1 Abr. 519.

ARSENIC, Restrictive Sale of. *See* 14 & 15 Vic. c. 13.

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in number and three-fourths in value of creditors at a general meeting, and confirmed by majority in number and value at a subsequent meeting held not less than seven nor more than fourteen days from first meeting; debts not exceeding 10*l.* to be reckoned in value, but not in number; debtor to be present at both meetings. If registrar satisfied, resolution to be registered; until then, to be of no validity. Registration to be conclusive evidence Act complied with. Terms of composition binding on creditors in statement of assets and debts, but not on any other creditors. If the debtor be ignorant of holder of bill or note, suffice to describe amount, name of acceptor, or person to whom payable, and any other particulars within his knowledge. Composition may be enforced by court on motion, and disobedience of order a contempt of court. Court may adjudge debtor bankrupt, if satisfied that composition cannot proceed without injustice or undue delay. Creditor making false claim, or proof, guilty of misdemeanor (Debtors' Act, s. 14), and debtor to remain liable for balance of debt incurred by fraud. *See* General Rules in Bankruptcy, from 252 to 315.

By section 28, the trustee in bankruptcy, with the assent of the creditors, by a special resolution, may accept any terms of settlement, subject to the approval of the court, when the bankruptcy will be annulled. *See* sec. 125.

[1] *Liquidation.*—This is a new mode of proceeding. The 128th sect. provides debtor may summon general meeting of creditors, who may pass a special resolution in favour of liquidation by arrangement; and at a meeting to be held within a week, appoint trustee, with or without a committee of inspection. Provision as to first and subsequent meetings in bankruptcy to apply to this section, except that chairman be selected by meeting, and that no creditor vote until his debt is proved by statuary declaration. Creditors by special resolution in general meeting may close liquidation and grant discharge of debtor and release of trustee. On voting debts not exceeding 10*l.* to be reckoned in value, but not in number. Certificate of appointment of trustee to be of same effect as in bankruptcy. Property to vest in trustee from appointment, and all settlements, &c. void in bankruptcy to be void as against him. To have same rights and the same duties as trustee in bankruptcy, and property to be distributed as in bankruptcy. Debtor to be present at meeting when special resolution passed, and produce statements showing assets, debts, &c. Creditors by special resolution may grant discharge of debtor.

[2] By 32 & 33 Vic. c. 62, to be cited as the "Debtors' Act, 1869," sect. 4 provides that after 1st January, 1870, no person is to be arrested or imprisoned for non-payment of money, except for a penalty or sum recoverable summarily before a justice, or ordered to be paid by a trustee or person in a fiduciary character, or by an attorney for misconduct, or ordered to be paid as an officer of the court, or salary or income ordered by the Court of Bankruptcy to be appropriated. No person to be imprisoned for more than one year. Judgment or order for payment not to be otherwise affected. Sec. 5 saves the power of committal for small debts, to be exercised only as respects a judgment of a county court by the judge or his deputy, and only as to judgments of a superior court when they do not exceed 50*l.* exclusive of costs, and only where it is proved to the satisfaction of the court that the debtor either has or has had since the date of the order or judgment, means to pay, and has refused or neglected to pay. Under this section, a judge of the superior courts may, upon summons, make an order for commitment on any order or judgment of any competent court, and direct payment by instalment, and may vary and rescind such order. Persons so committed are to be treated the same as if arrested on a *ca. sa.* Such imprisonment not to be a satisfaction of debt, or cause of action. *See* Rules and Forms, 1870, and County Court Rules.

[3] The meaning of the word "immediately" in sect. 103 (24 & 25 Vic. c. 96, ss. 103, 113) is immediately after the person was "found committing the offence," not after the discovery of the offence. *Downing v. Capel*, L. R. 2 C. P. 461; 36 L. J. M. C. 97. *Reg. v. Marsden*, 37 L. J. M. C. 80.

A police officer arresting under a warrant for disobedience to a bastardy order ought to have it ready to be produced also, if required. 2 B. & S. 363.

A solicitor on his way to attend a summons at judge's chambers is privileged from arrest. *Jewit, In re*, 33 L. J. Ch. 730. Or going to attend the county or insolvent court. 1 Jur. N. S. 969; 2 B. & S. 47.

The costs of an attachment under which an attorney who was privileged had been arrested, were ordered to be paid by the parties at whose instance the attorney was arrested, and by the sheriff and his

ARSON.[1] 1 Abr. 539. Stats. 7 Wm. 4, and 1 Vic. c. 19; 24 & 25 Vic. c. 97.

ARTICLED Clerk. 1 Ab. 546. *See* Wharton's Manual for Articled Clerks. 6 & 7 Vict. c. 73. 23 & 24 Vic. c. 127.

I. Service under Articles.[2]

II. Stamp on.[3]

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officer who made the arrest. *Dodd v. Holbrook—Pittman, In re*, 12 Jur. N. S. 19; 35 L. J. Chanc. 175—V. C. S.

[1] On an indictment for arson, with intent to defraud, the case was opened suggesting as a motive for the act the desire to realise the sum insured on the goods. Evidence to negative the suggested motive, that the prisoner was in easy circumstances, was admitted. *Reg. v. Grant*, 4 F. & F. 322. But in a case turning on identity evidence was rejected that, a few days previously to the fire another building of the prosecutor's was found on fire, and the prisoner was seen standing by, with a demeanour which showed indifference or gratification. *Reg. v. Harris*, 4 F. & F. 342. But the fact of claims having been made on other offices in respect of fires which had occurred previously has been received. *R. v. Gray*, 4 F. & F. 402.

[2] What is sufficient service under articles must depend on the service in each particular case, and the courts will not lay down any general rule. *Re Duncan*, 5 B. & S. 341; 33 L. J. Q. B. 190. Where an articled clerk had served for nineteen months under his articles, and had then been compelled, from illness and other causes, to be absent for more than sixteen months, the court permitted him to be discharged from the old articles, and to serve the same master under new ones, for such a period as, with the time during which he had already served, would make up the full period of five years. *Ex parte De Jivas*, 34 L. J. Q. B. 7; 4 B. & S. 99; *ex parte Rogers*, 34 L. J. Q. B. 136. Officiating as steward of a manor for the benefit of his family, will not disqualify, though he may be absent from his master for a day at a time. *Ex parte Peppercorn*, 35 L. J. C. P. 239; 16 C. B. 473. But an articled clerk, after serving a part only of the period of five years, discontinued service, and after the expiration of five years from the date of the articles (his master having died), moved that his articles might be assigned to another attorney, or that he might be allowed to serve under fresh articles, and that in either case the term for which he had actually served might be reckoned as part of the necessary period of five years. The court refused the application. *Ex parte Keddle*, 4 B. & S. 993; 11 Jur. (N. S.) 503; 34 L. J. Q. B. 136; 13 W. R. 290; 11 L. T. (N. S.) 625. So when the break in the service occurred by reason of the clerk going into the army for between two and three years. *Ex parte Smith*, 28 L. J. Q. B. not followed in *ex-parte Keddle*, Q. B. 13 W. R. 290. *See ex parte Blunt*, 2 Bla. 764. *Re Sherry*, 37 L. J. C. B. 82; 3 L. R. Q. B. 164, decided that an articled clerk performing all his master's business may, at leisure hours, work for wages with another attorney. In order to enable a graduate of the universities, named in sec. 7, of 6 & 7 Vict. c. 73, to be admitted an attorney after three years' service, he must have taken his degree before being bound by articles. *Ex parte Bradford*, E. & E. 417. *Ex parte Gardiner*, 8 L. T. (N. S.) 315. One who, having served ten years, enters into articles for three years, under sect. 4 of 23 & 24 Vict. c. 127, is entitled to the privileges afforded by that section, notwithstanding there may have been an unemployed interval between the termination of his former service and the date of his articles. *Ex parte Vosper*, 4 B. & S. 901; 10 Jur. (N. S.) 724; 33 L. J. Q. B. 113.

[3] The court will (in the absence of special reasons to the contrary) allow service to an attorney, under articles of clerkship stamped for the County Palatine of Lancaster, to count as service, if the articles are afterwards stamped for service here. *Ex parte Hogg*, 13 W. R. 315; 11 L. T. (N. S.) 598 Q. B., and will permit service under unstamped articles reckoned from their date, where omission to pay duty at the proper time was the result of an emergency, justly inferred to have been unforeseen by the party, the stamp having been since affixed under authority of Commissioners of the Treasury. *In re Breden*, 12 C. B. (N. S.) 351; 31 L. J. C. P. 321; 6 L. T. (N. S.) 494. Where the delay in stamping articles caused by accidental omission, and by the closing of the office on a holiday, and the commissioners had allowed the stamping on payment of a penalty, the court allowed the time to run from the day of execution. *In re Appleton*, 11 W. R. 35 Q. B. Service under unstamped articles for five years, and the articles afterwards stamped on payment of a penalty of 50*l.*, under 19 & 20 Vict. c. 81, s. 3, the court allowed the service to count from the execution of the articles of clerkship. *Anon.*, 10 W. R. 211; 5 L. T. (N. S.) 579. To allow the service under unstamped articles of clerkship to reckon from their date, it must be shown that when the articles were entered into there was a reasonable probability that the money for the stamp would be forthcoming at the proper time. The 19 & 20

III. Enrolment and Filing.[1]

IV. Examination.[2]

V. Admission.[3]

VI. Return of Premium.[4]

Vict. c. 82, s. 3, has not altered in this respect the duty of the court. *Ex parte Edwards*, C. P. 10 Jur. (N. S.) 17. *Ex parte Wilson*, 10 Jur. (N. S.) 469; 33 L. J. Q. B. 89. *See Ex parte Darville*, 2 L. R. C. P. 133.

[1] The court will not order articles to be enrolled, and the service to count from the time of execution, where the articles have been stamped after six months, on payment of a penalty, by permission of the Treasury under 19 & 20 Vict. c. 81, s. 3, unless the delay in payment of the duty is satisfactorily accounted for. *Ex parte Edwards*, 32 L. J. C. P. 213; 11 W. R. 754; 8 L. T. (N. S.) 300. See the same case as to what was not deemed a reasonable expectation of being provided with the money to pay the stamp duty. Nor will the court allow articles to be enrolled *nunc proc tunc*, and the service under them to be reckoned as from their date, where there has been an omission to cause them to be stamped within the time required by law, unless it be shown that the omission has been the result of some unforeseen emergency, or of the failure of some just expectation. The mere disappointment of a vague hope will not suffice. *Ex parte Jones*, 14 C. B. (N. S.) 301. To entitle an articled clerk, whose articles, through excusable omission, have not been enrolled, to apply to the court to have them enrolled *nunc proc tunc*, he must have had them properly stamped, and have paid the penalty (if any); and until this is done, the court will not make any order upon the subject. *Ex parte Sewell*, 11 W. R. 673; 8 L. T. (N. S.) 331. *Ex parte Saffery*, 11 W. R. 779.

In the year 1847, F, being then in his sixteenth year, was, with the consent of his father, bound by indenture to serve H., an attorney, for a period of more than five years. This indenture was in the form of an indenture of apprenticeship, but contained the usual covenants inserted in articles of clerkship: and it was stamped with a 1*l.* stamp. After F. had served under it for two years, he discovered that it was not in the proper form, and he applied to H. to cancel it, and enter into proper articles. Although H. was willing that this should be done, it was not carried out, in consequence of the inability of the father of F. and also of F. himself, to find the money for the stamp and penalty. F. served H. as a clerk until 1858, when H. died, and he afterwards continued to serve the successor of H. until 1864. He was competent to carry on the business of an attorney and solicitor:—*Held*, that the indenture might be treated as articles of clerkship, and upon its production, properly stamped, it might be enrolled, and the service allowed to count from the time at which F. entered upon the service with H. *Ex parte Forrest*, 35 L. J. Q. B. 131.

The provisions of the 6 & 7 Vict. c. 73, ss. 8, 9, as to filing within six months an affidavit of the execution of articles of clerkship, and enrolling them, are not merely for the purposes of the revenue, but also for securing the fitness of persons to be admitted as attorneys; and therefore, if the omission has been wilful, although the duty and penalty has been paid, the court will not allow the service to be computed from the execution of the articles of clerkship. *Ex parte Belk*, 2 H. & C. 737; 10 Jur. (N. S.) 348; 33 L. J. Exch. 73. *Ex parte Harris*, 11 W. R. 84.

[2] See Rules of Court cases, &c., 1 Ab. 559.

[3] It is not necessary that articled clerks applying to be admitted under 23 & 24 Vict. c. 27, s. 4, should produce a certificate of service from their masters, the service, if necessary, may be proved by other means. *Ex parte Rigby*, 11 L. T. 671 (N. S.) An attorney may be admitted on taking the oath of allegiance, and the oath to demean himself truly and honestly, under sects. 18 & 19 of stat. 6 & 7 Vict. c. 73. But he cannot practise in England without taking the oath substituted for the oaths of allegiance, supremacy, and abjuration, by stat. 21 & 22 Vict. c. 48, s. 1. *Re Comrooden Tyabjee*, 1 E. & E. 319. *Sed vide* 31 & 32 Vic. c. 72. It is questionable whether the court will admit an attorney on special terms except a minor under any circumstance. There must, at all events, be a very urgent necessity to induce the court to interfere in either case. *Ex parte Steele*, 33 L. J. 326, Q. B.; 11 Jur. (N. S.) 1254. Under 23 & 24 Vict. c. 127, an articled clerk, *bonâ fide* engaged in the business of an attorney, admitted after three years' service. 2 L. & N. 16. Where the applicant for admission became clerk to an attorney in March, 1855, at the age of fifteen, and in 1864, after nine years' service, entered into articles of clerkship, under which he served till 1868:—*Held*, that he was entitled to be examined for admission according to the act. *In re Articled Clerk*, 37 L. J. Q. B. 82; *In re Saffery*, 11 W. R. 779.

[4] A ward was articled to a solicitor, under the direction of the court, and a premium of 300 guineas was paid. Subsequently the ward desired to change his profession, and proposals were accordingly, with that object, brought before the judge in chambers. There was no allegation of misconduct on the part of the solicitor:—*Held*, that the court had no power to direct the return of

ARTIZANS and Labourers' Dwellings. *See* 31 & 32 Vic. c. 130.

ASSAULT and Battery. 1 Ab. 568. On Women and Children, 16 & 17 Vict. c. 30.

I. Of the Action for an Assault and Pleadings.[1]

II. Of Criminal Proceedings Connected with.[2]

ASSESS Taxes. *See* Covenant, Landlord and Tenant Taxes.

ASSIGNMENT.[3] 1 Ab. 573.

any part of the premium. *Craven v. Stubbins*, 10 Jur. (N. S.) 1189; 13 L. T. (N. S.) 402, C.

[1] Where, by the law of a foreign country, damages may be recovered for an assault there committed, an action is maintainable in England by a British subject, although proceedings are pending in the foreign court in respect of the same assault. *Seymour (Lord) v. Scott*, 1 H. and C. 219; 9 Jur. (N. S.) 522; 32 L. J. Exch. 61; 8 L. T. (N. S.) 511. In an action for an assault, the evidence showed that the defendant had committed a rape on the plaintiff. The judge considered the ground of complaint involved a charge of felony, and non-suited the plaintiff:—*Held*, that the non-suit was right. *Wellock v. Constantine*, 3 H. & C. 146; 32 L. J. Ex. 285; 7 L. T. 1251.

A plea that plaintiff was wrongfully in possession of chattels belonging to defendant's master, and that in retaking them they *molliter manus imposuerunt*:—*Held* good, and that the defendants were justified in retaking the goods of their master by force from a person wrongfully refusing to give them up. *Blades v. Higgs*, 4 L. T. (N. S.) 551; 30 L. J. C. P. 347; 106 B. 713.

[2] Where a plaintiff lays an information for an assault, and then abandons the proceedings, and gives notice of the abandonment, the magistrates may give a certificate of dismissal, which will be a bar to an action for the same assault. *Vaughan v. Bradshaw*, 9 C. B. (N. S.) 103. *See Tunncliff v. Tedd*, 5 id. 553. A conviction of a defendant for unlawfully wounding, and his being sentenced to imprisonment, and to pay a sum of money to the prosecutor, for his necessary costs of the prosecution, form no bar to his subsequently suing the defendant in an action for the same assault, and recovering damages. *Lowe v. Horwarth*, 13 L. T. (N. S.) 297. To an action of assault and battery, a certificate, under 24 & 25 Vict. c. 94, s. 44, may be pleaded, together with a plea that the assault was committed in order to prevent a breach of the peace. *Lawler v. Kelly*, 15 Ir. Com. Law Rep. App. 1, Exch.

In order to render a conviction by justices for assault, a bar to a civil action under sects. 25, 45, 100, the conviction must be followed by fine or imprisonment which has been paid or suffered. An order that defendant enter into a recognizance, and the payment by him of the recognizance fee, is no bar. The conviction can only be proved by the record or an examined copy. *Hartley v. Hindmarsh*, 1 L. R. C. P. 553; 35 L. J. M. C. 255; 12 Jur. (N. S.) 502.

It is questionable whether a magistrate has a right to arrest a person guilty of a misdemeanour in his presence, where there has not been any breach of the peace actual or apprehended. *King v. Poe*, 15 L. T. (N. S.) 37 Ex. Irish.

An indecent assault committed upon a girl ten years of age, with her consent, is not indictable. *Reg. v. Johnson*, 1 L. & C. C. C. 632; 10 Cox, C. C. 114; 11 Jur. (N. S.) 532; 34 L. J. M. C. 192; 12 L. T. (N. S.) 503. But for attempting to have carnal knowledge of a girl under ten, being a misdemeanour, consent is no defence. *Reg. v. Beale*, 35 L. J. M. C. 60; 13 L. T. (N. S.) 335, C. C. R.; *Reg. v. John Holland*, C. C. R. 15 W. R. 879; 16 L. T. 536. An indictment for attempting to ravish and carnally knew is good without the word above. *Reg. v. Holland*, 16 L. T. 536. A count for assaulting, and wounding, and ill-treating the prosecutor, will sustain a verdict of guilty of common assault. *Reg. v. Oliver*, 30 L. J. M. C. 12, sued 43. An assault is within the rule that fraud vitiates consent, and therefore, when a man, knowing that he had a foul disease, induced a girl of thirteen, who was ignorant of his condition, to consent to sleep with him, and he infected her:—*Held*, that he might be convicted of an indecent assault. *Reg. v. Bennett*, 4 F. & F. 1105. A previous summary conviction for an assault under 24 & 25 Vict. c. 100, s. 45, is not a bar to an indictment for manslaughter of the party assaulted, founded upon the same facts. *Reg. v. Morris*, 10 Cox, C. C. 480; 1 L. R. C. C. R. 90; 36 L. J. M. C. 84; 16 L. T. (N. S.) 636; 15 W. R. 990.

[3] In an action for money due on an award, a plea on equitable grounds, that the plaintiff assigned the debts to D. & Co., who gave notice thereof to the defendant, and that the assignment remained in force, is good, as equity would grant an unconditional injunction to restrain the plaintiff from suing for his own benefit. *Jeffs. v. Day*, 1 L. R. Q. B. 372; 35 L. J. Q. B. 99. To constitute in equitable assignment there must be an order to pay out of a certain fund. *In re Thornton*, 13 L. T. (N. S.) 516. Upon an assignment of an interest in a trust fund, it is the duty of the assignee to give notice to the trustee; and the only notice available is formal notice by the person intending to claim the benefit of it, or by an agent on his behalf. *Lloyd v. Banks*, 4 L.

ASSOCIATE.[1]

ATTACHMENT for Contempt.[2] 1 Ab. 575. *See* Sheriff; Witness.

ATTACHMENT of Debts.[3] 1 Ab. 579. *See* also Foreign Attachment.

ATTAINDER.[4]

R. Eq. 222. *See Buller v. Plunket*, 30 L. J. C. P. 341. *Webster v. Webster*, 31 id. 655, 2 L. R. C. P. 593. In the absence of the word "assignees" a purchaser will not be compelled to complete. *Stevens v. Austin*, 3 E & E. 685. When an equitable chose in action has been assigned, the debtor cannot set off against the assignee a debt which has been accrued to him from the assignor since the notice of assignment, though resulting from a contract entered into previously, unless from the nature of the transaction it appears to have been intended between the original parties that the one should be set off against the other. *Watson v. Mid-Wales Railway Company*, 36 L. J. C. P. 285. *See Baker v. Aleander*, 35 L. J. C. P. 217. Under 17 & 18 Vic. c. 128, s. 61. Notice of the assignment of the debtor is not essential. *Watts v. Porter*, 3 C. & B. 743. *Crow v. Robinson*, 3 L. R. C. P. 264; 37 L. J. C. P. 124. *Re Lloyd v. Banks*, 3 L. R. Ch. 488.

[1] If a *postea* is withheld by the associate, application should be made to a judge by summons. 14 L. J. 288.

[2] A sheriff having seized goods under a *fi. fa.* against A., B. claimed them, whereupon an interpleader summons was taken out by the sheriff and served on B.; notwithstanding which, B. took the goods forcibly out of the possession of the officer, and sold them:—Rule absolute for an attachment not to be enforced if he paid the amount of the execution into court. *Cooper v. Asprey*, 9 Jur. (N. S.) 1198; 32 L. J. Q. B. 209; 8 L. T. (N. S.) 355. To obtain an attachment against an attorney for disobeying an order for not disclosing the place of abode of his client, there must be a demand in writing. *Brown v. Wigens*, 7 L. T. (N. S.) 622. When a party directed by rule to pay money, executes a deed for benefit of his creditors, the court will only grant an attachment on leave of the Court of Bankruptcy being obtained. *Welch v. Back*, 31 L. J. Q. B. 263.

[3] Any possible interest or resulting trust in stock standing in the names of trustees, which a judgment debtor may have is chargeable by a judge's order under these acts. *Baker v. Tynte*, Q. B.; 2 E. & E. 897. On a joint judgment against several, a debt due to any one or more of the judgment debtors may be attached in the hands of a garnishee. *Miller v. Mynn*, 1 E. & E. 1075. A number of small debts, due by different persons to a judgment-debtor, may be included in one attachment order. *Doherty v. M'Daid*, 16 Ir. C. L. R. 22, App. A garnishee order applies to rents due to the judgment-debtor. *Mitchell v. Lee*, 36 L. J. C. P. 154; 15 L. J. 502. The court will not grant a garnishee order against funds of the debtor in the hands of an official liquidator. *Dawson v. Malley*, Ir. Rep. 1 C. L. 207. A judgment-creditor, who has obtained judgment against an intestate's estate before an administration decree, is entitled, under a garnishee order, to enforce his judgment against a debtor to the estate. *In re Barnes, Harper v. Barnes*, 36 L. J. C. 63. A judgment-creditor obtained a garnishee order. After the order, but before execution levied, the debtor became bankrupt. The judgment-creditor then issued execution againgt the garnishee. The assignees in bankruptcy declined to make any claim. The court refused to set aside the execution. *European Bank v. Fox; ex-parte British Mercantile Bank*, 15 L. T. (N. S.) 288, Exch. Charging order on shares may be obtained in respect of a judgment-debtor's contingent interest. *Cragg v. Taylor*, 36 L. J. Ex. 63. Where judgment is recovered against the nominal registered owner of shares in a company, a court of law, in making a charging order, will not go into the question of whether the defendant holds the shares as a trustee or beneficially; that is a question for a court of equity. *Rogers v. Holloway*, 5 M. & G. 292. *Cragg v. Taylor*, 1 L. R. Ex. 148; 35 L. J. 92.

A party who pays money under compulsion of a court of law, is protected against all claims made to it by other parties. *Wood v. Dunn*, 7 B. & S. 94; 2 L. R. Q. B. 73, Ex. Ch. A deed under the Bankruptcy Act of 1861, s. 192, is a bar to an execution issued against a garnishee under an order to the same extent that it is a bar to an execution on a judgment. *Kent v. Tomkinson*, 2 L. R. C. P. 502; 36 L. J. C. P. 224; 17 L. T. (N. S.) 41. *Wood v. Dunn*, 15 L. T. (N. S.) 611. Payment into court by a garnishee is a payment by the garnishee a discharge against the judgment-debtor, to the amount paid. *Culverhouse v. Wickens*, 37 L. J. C. P. 107; 3 L. J. C. P. 295. A judgment-creditor who arrests his debtor in a *ca. sa.* and detains him in execution cannot proceed under the garnishee clauses. *Jouralde v. Parker*, 30 L. J. Ex. 237; 6 H. & N. 431. A garnishee cannot be arrested or held to bail under 1 & 2 Vict. c. 110, s. 2. *Horner v. Luff*, 3 B. & S. 818.

[4] An attainder producing civil death for some purposes does not create an incapacity to contract a valid marriage in a foreign country, or the tracing of descent through the attainted party. *Hynnaud v. Leslie*, 1 L. R. C. P. 389: 35 L. J. C. P. 226; 14 L. T. 756.

ATTEMPTS to Commit Crimes.[1]

ATTORNEY. 2 Ab. 5. *See* Arrest Champerty; Maintenance. Statutes 6 & 7 Vic. c. 73; 14 & 15 id. c. 88; 23 & 24 id. c. 127; as to Ireland, 29 & 30 id. c. 84. As to duties payable by, 16 & 17 Vic. c. 63; Exemptions, 55 Geo. 3, c. 184.

I. Of the Certificate. *See* 23 & 24 Vic. c. 127, s. 22.

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III. Consequences of acting as an Attorney without being duly Qualified. Acting as Clerk or for another Attorney, p. 40.

IV. Privileged Communications not to be divulged, p. 40.

V. Liabilities of, for Negligence, Breach of Trust, &c., p. 40.

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XIV. Partnership Between, p. 45.

I. Of the Certificate. *See* 23 & 24 Vic. c. 127, s. 22.

II. Country Attorney and Town Agent.[2]

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[1] An attempt to commit a felony can only be made out where, if no interruption had taken place, the felony itself could have been effected. *Reg. v. Collins*, 1 L. & C. C. C. 471; 9 Cox C. C. 497; 10 Jur. N. S. 686; 33 L. J. M. C. 177; 10 L. T. N. S. 581; *Reg. v. Bain*, 31 L. J. M. C. 88; 1 L. & C. 129.

If a person puts his hand into the pocket of another, with intent to steal what he can find there, and the pocket is empty, he cannot be convicted of an attempt to steal. *Reg. v. Cheesman*, 31 L. J. M. C. 89.

Upon an indictment for an attempt to have carnal knowledge of a child under the age of ten years, the fact of her consent to the act is unimportant. In the case of an indecent assault it would be different. *Reg. v. Frederick Beale*, 1 L. R. C. C. 10.

In an indictment for attempting to steal goods in a dwelling-house, it is not necessary to specify any particular article. A general allegation is sufficient. *Reg. v. Johnson*, 10 Jur. N. S. 1160; 34 L. J. M. C. 24; C. C. R. *Reg. v. Johnson*, 34 L. J. M. C. 24.

[2] An attorney as such is bound by an act done on his behalf by his London agent. *Withers v. Parker*, 6 Jur. N. S. 1033; 29 L. J. Exch. 320—Ex. C.

III. Consequences of Acting as an Attorney without being duly Qualified, and acting in Court as Clerk, or for another Attorney.[1]

IV. Privilege of,[2] Communications to, not to be Divulged.[3]

V. Liabilities of, for Negligence, Breach of Trust, &c.[4]

The agent acting in the ordinary course of business, is taken to give credit to the country solicitor, not to the country solicitor's client. *Waller v. Holmes*, 1 Johns. & H. 239: 6 Jur. N. S. 1367; 30 L. J. Chanc. 24; 3 L. T. N. S. 289. Therefore the London agent of a country solicitor has no lien for costs on the documents of the country solicitor's client. *Ib. Davis v. Bower*, 7 L. T. N. S. 739—Q. B. Where the agent, the attorney on the record, after death of the country attorney, wrote for authority to sign judgment, and not receiving any answer, signed judgment and taxed costs; court refused to set aside the judgment upon the client's application. *Davies v. Bower*, 7 L. T. N. S. 739. 11 W. R. 282.

Under sect. 28 of 23 & 24 Vic. c. 127, the town agent is entitled to a charge on all property received for an unascertained balance due to him by the country solicitor. *Tardrew v. Howell*, 3 Giff. 381; 31 L. J. Ch. 57.

[1] The fact of a solicitor admitted on the roll not having taken out his certificate, does not render his proceedings in a suit nugatory or void; it disqualifies him from recovering his fees, and renders him subject to penalties. *Sparling v. Brereton*, 2 L. R. Eq. 64; 35 L. J. 461; *see* 11 Beav. 465; 2 Ex. Rep. 616; 6 id. 88. Hence an instrument prepared by an uncertificated person is not on that ground invalid. *Holdgate v. Slight*, 2 L. M. & P. 662; 21 L. J. Q. R. 74; but a contract as to preparing conveyances by an unqualified person is illegal. *Taylor v. The Crowland Gas Company*, 10 Ex. Rep. 293.

A commissioner in bankruptcy is not bound to hear a person who, although a duly admitted solicitor, does not appear as the solicitor of the party for whom he appears, but only as the clerk of such solicitor. *Ex parte Broadhouse, in re Broadhouse*, 2 L. R. Ch. 655; 36 L. J. Bank. 29; 15 W. R. 126; 17 L. T. N. S. 126. A. having suffered personal injuries through the negligence of the servants of H. & Co., applied to an attorney, and the attorney's clerk agreed with H. & Co., to accept a certain sum "in full satisfaction of all demands for the injuries," and gave a written undertaking to that effect; A. having repudiated the transaction:—*Held*, that the agreement entered into by the attorney's clerk, as it took place before the issuing of any writ, was not binding upon A. *Duffy v. Hanson*, 16 L. T. (N. S.) 332.

[2] An attorney acting as counsel is entitled to privilege of speech as such, and this privilege extends to anything reasonably relevant to the matter in dispute. *Mackay v. Ford*, 29 L. J. Exch. 404.

[3] The privilege of a solicitor applies only to communications received from his client; it does not extend to those derived from third parties. *Ford v. Tenant*, 9 Jur. N. S. 292; 32 L. J. Chanc. 465; 7 L. T. N. S. 732; 32 Beav. 162; *see* 3 Giff. 304. *Charlton v. Coombes*, 9 Jur. N. S. 534; 32 L. J. Chanc. 284; 8 L. T. N. S. 81; or to the delivery of securities in his presence. *Re Land Credit Society*, 15 W.R. 703.

The ownership of a solicitor in the books relating to his business is subject to his client's right to have them protected from publication. *Roberts ex parte, in re Holden*, 9 L. T. N. S. 469; 33 L. J. 138. Therefore, the books of a solicitor who has been adjudicated a bankrupt cannot be sold, as they may be in the case of a trader. *Ib.* 10 Jur. N. S. 28.

The refusal of a client to allow his attorney to disclose communications is not to be treated as if he had kept a material witness out of the way: *Wentworth v. Lloyd*, 10 H. L. C. 589: 33 L. J. C. 688.

A wife, in a suit for judicial separation, may be asked whether she had not originally instructed her attorney to sue for restitution of conjugal rights, 8 L. T. 175.

[4] To sustain an action for negligence against an attorney there must be a privity of contract between the parties. *Robertson v. Fleming*, 4 Macq. H. L. 167. *Fish v. Kelly*, 17 C. B. 194; *see Simmons v. Rose*, 31 Beav. 1. *Allen v. Clark*, 7 L. T. 781.

It is the duty of an attorney to institute proceedings in the proper court, and he is liable to his client for unnecessarily and improperly suing in a superior court, unless, with a knowledge of the consequences, his client instructs him so to do. *Lee v. Dixon*, 3 F. & F. 744.

An attorney retained to bring an action, and not the person employed as process server, is liable to be sued by the client for damage caused through neglect in omitting to make the endorsement of service. *Curlewis v. Broad*, 31 L. J. Ex. 473; 10 W. R. 797.

Where a managing clerk of attorneys had without their knowledge received money for the purpose of investment: *Held*, that the question was (in the absence of any actual authority), whether they had held him out as having authority so to receive it on their behalf. *Cornelius v. Harrison*, 2 F. & F. 758.

Primâ facie, it is obligatory of an attorney who has recovered a verdict for a client, to issue execution, and at all events, if desired to do so. And if told at the time when retained that his client has no money for costs, he cannot demand payment of costs

VI. Summary Jurisdiction of Court over Attorneys, and Striking off the Roll.[1]

incurred before issuing execution. But to maintain an action for negligence against him for not doing so; there must be some evidence of neglect, the damage would be the sum the execution would have realized. *Harrington v. Binns*, 3 F. & F. 942.

Trespass will not lie against a solicitor or his client for arresting a party in an attachment which is afterward set aside, *Williams v. Smith*, 14 C. B. N. S. 596. When money paid into his hands as "agent of vendor," he is not a stakeholder, but liable to pay over deposit on demand of client with interest from time of default. *Edyell v. Day*, 23 L. J. C. P. 7; 1 L. R. C. P. 110; 12 Jur. 27. *Bickford v. D'Arcy*, 1 L. R. Exch. 354; 35 L. J. Exch. 202.

An attorney who, as the attorney of the employer, had prepared a deed regulating the terms of engagement between plaintiff and the employer, and having the deed in his possession as such attorney, was asked by plaintiff, nine years after the date of the deed, for gratuitous information as to the effect of the deed. The attorney inadvertently gave an erroneous answer, and plaintiff to his damage acted on it:—*Held*, the attorney was not liable in an action by plaintiff. *Fish v. Kelley*, 17 C. B. N. S. 194. *Hill v. Finney*, 4 F. & F. 616.

On a rule calling upon an attorney to answer the matters of an affidavit (*Wright, in re*, 12 C. B. N. S. 705), it is no answer that the applicant has already filed a bill in equity against the attorney for an account. *Ib.* Where it has been referred to the master to examine into the charges, and to report to the court, the court will only look to his report. *Ib.*

[1] Summary jurisdiction may be exercised after admission, though misconduct committed during articleship. *In re Hill*, 37 L. J. Q. B. 295.

When an attorney does not appear to show cause against a rule, calling on him to answer the matters of an affidavit, the court will make the rule absolute to answer within a certain time, and in default, that an attachment issue, and that he be struck off the roll. *Worman, in re*, 1 H. & C. 636; 32 L. J. Exch. 83. Although the court will not grant a rule calling on an attorney to answer the matters of an affidavit charging him with an indictable offence, but they will, under such circumstances, grant a rule *nisi* on him, to show cause why he should not be struck off the roll, or suspended from practice. *Anon.* 12 W. R. 311—Q. B.; 7 L. T. 916.

An order upon an attorney of one of the parties to pay costs, he not being a party applying to the court, is bad, if the attorney had no notice by the summons that he would be called upon to pay such costs. *Rouch v. Alberti, Wood, ex parte*, 9 L. T. N. S. 420. Where a rule calling on an attorney to answer the matters of an affidavit is discharged by consent, the court will not allow the affidavits in support of the rule to be taken off the files of the court. *Anon.* 12 W. R. 1012. Nor on serious charges allow a compromise. *Anon.* 9 L. T. N. S. 299, Exch.

On applications by attorneys, who have been struck off the roll for misconduct, for re-admission, it is essential that they should produce certificates of good character and conduct since the time of their having been struck off. And the same rule applies to a person who is disbarred and afterwards applies to be admitted an attorney. *In re Robins* and *in re Pyke*, 34 L. J. Q. B. 121; 11 Jur. N. S. 504; S. C. 34 L. J. Q. B. 220; 11 Jur. N. S. 860; 6 B. & S. 703.

Where order made that an attorney deliver to a client his papers, it is no answer to an attachment for disobedience of the order, that agent of attorney, having possession of the papers, claims a lien on them in respect of agency charges. *Andrew, in re*, 7 H. & H. 87.

The court will exercise its summary jurisdiction over an attorney by suspending or striking him off the rolls, although the misconduct of which he has been guilty did not arise in a matter strictly between attorney, and client. *In re Blake*, 3 Ell. & Ell. 34; 30 L. J. Q. B. 32. But it will not exercise its summary jurisdiction over an attorney simply because he has, from improper motives, given information which might be used against a former client. *In re Cutts, ex parte Ibbetson*, 16 L. T. N. S. 715.

Where an attorney has received money on behalf of his client and fails to pay it over, and the client brings an action against him for the amount, and recovers judgment, the court ceases to have summary jurisdiction to order the attorney to pay. *In re Corbett Davies*, 15 L. T. 161.

The court will not grant a rule calling on an attorney to pay over to his client money received by him as his attorney when the client has sued his attorney for the amount, and obtained judgment or a decree. 15 L. T. Exch. 161.

Where an attorney has been suspended by one of the superior courts for a term of years, it is not compulsory upon the other courts of co-ordinate jurisdiction, as in the case of striking off the rolls, to suspend him also, but will exercise their own discretion. *De Medina, in re*, 6 L. T. N. S. 536, Q.B. *See Re an Attorney*, 7 L. T. N. S. 716. To enable a defendant to obtain an attachment against an attorney for disobeying an order of a judge made under sect. 7, Act 1852, for not declaring the place of abode of the plaintiff, he must have made a demand in writing. *Brown v. Wiggins*, 7 L. T. N. S. 622. The court will not strike an attorney off the rolls where he has become bankrupt having moneys of a client in his hands unless a clear case of fraudulent misappropriation be made

VII. Of the Retainer and Authority it Confers. When Attorney personally Liable.[1]

VIII. Payments to. Books and Papers in Possession of.[2]

IX. Changing Attorney[3] and Attorney Changing Name.[4]

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out against him. *Sparks, in re*, 17 C. B. N. S. 727.

[1] An attorney who is retained for the conduct of a chancery suit, thereby enters into a specific contract to carry on the proceedings, and he cannot, without due notice, and before the suit is terminated, rescind the contract, and sue on a *quantum meruit*. *Coppinger v. Synnott*, 3 Ir. Com. Law. Rep. 563, Q. B. An attorney retained to defend an action is not guilty of actionable negligence if he enters into a compromise without the consent of his client, provided he acts *bonâ fide* and with reasonable care and skill, and the compromise is for the benefit of the client, and is not made in defiance of his express prohibition. *Chown v. Parrott*, 14 C. B. N. S. 74; 9 Jur. N. S. 1290; 32 L. J. C. P. 197; 8 L. T. N. S. 391. *Prestwich and another v. Pooley*, 18 C. B. N. S. 836; 34 L. J. C. P. 189; 13 W. R. 753; 12 L. T. N. S. 390; therefore by agreeing to take back as goods sold, with costs of the action for the value. But *semble*, where the compromise is a great departure from the object of the action the client will not be bound. *Swinfen v. Swinfen* was an exceptional case, from which no general rule can be drawn. *Pristwick v. Pooley*, C. P. *supra*. *Fray v. Voules*, El. & El. 839. *See post*, Compromise.

Although it may strictly be the rule that an attorney's authority ceases upon signing judgment, yet the court will infer a continuance of the retainer from slight circumstances, as where plaintiff, after judgment signed, desired her solicitor not to compromise:—*Held*, that having compromised, she had a right of action against her solicitor. *Butler v. Knight*, 2 L. R., 2 Ex. 109; 36 L. J. 66.

A municipal corporation and retainer to oppose a bill in parliament should be under the common seal. 13 L. J. 911.

A contract by solicitor, in his own name, to purchase a freehold; though he acted as a mere agent of a client, he is bound to perform it. *Saxon v. Blake*, 29 Beav. 438. *Allaway v. Duncan*, 16 L. T. N. S. 264, C. P.

The equitable doctrine of constructive notice is founded on the principle, that the solicitor is *alter ego*, and his knowledge is the client's knowledge. *Baursot v. Savage*, 2 L. R. Eq. 134; 35 L. J. Chanc. 627; 14 L. T. N. S. 299. *In re Colemere*, 12 Jur. N. S. 38; 35 L. J. Bank. Cas. 8; 13 L. T. N. S. 621.

It is competent to a plaintiff to discharge a defendant from custody under a *ca. sa.*, notwithstanding the claim of his attorney for the costs. *Langley v. Headland*, 19 C. B. N. S. 42; 11 Jur. N. S. 431; 34 L. J. C. P. 183; 12 L. T. N. S. 385.

[2] The plaintiff's attorney wrote to the defendant to remit the balance of his account, with 13*s.* 4*d.* costs. The defendant remitted a bank bill for the balance only, which the attorney did not return, although he refused to accept it as payment, because his costs were not included:—*Held*, evidence of payment for the jury. *Caine v. Coulson*, 32 L. J. Exch. 97; 7 L. T. N. S. 636. Where a debt is paid before action, the plaintiff cannot recover the costs of his attorney's application. *Ib.*

Where the solicitor of a company writes a letter apparently on behalf of the company, he has no such property in it as to entitle him to prevent its publication, although he swears that it was written in his private capacity. *Howard v. Gunn*, 32 Beav. 462.

The sale of the account-books of a solicitor who has been adjudicated a bankrupt, is not authorised by the 137th section of the 24 & 25 Vict. c. 134. *Roberts, ex parte, in re Holden*, 10 Jur. N. S. 28; 33 L. J. Bank. 8, C.

It is no answer in an action of detinue by a rightful owner of a deed, that the deed is in possession of defendant's attorney, who has a lien on it. *Jordan v. Roberts*, 7 L. T. N. S. 68 Ex. The possession of the attorney, for the purposes of notice or a subpœna, is the possession of the principal.

An attorney to whom a writ had been sent for service, receiving the debt and costs from defendant, rule granted against him to pay over the money. *Walker v. Pearce and another, in re an Attorney*, 7 L. T. N. S. 285. After judgment obtained against an attorney in an action to recover money received by him on behalf of his client, the debt is merged in the judgment, a rule calling on him to pay over the money cannot be granted. *Corbet Davies, in re*, 15 W. R. 46. Where an infant, suing by *prochein ami*, has obtained judgment for damages and costs, which have been paid to the attorney, he may maintain an action against the attorney for the amount as money received for his use. *Collins v. Brook*, 5 H. & N. 700; 29 L. J. Exch. 255; 6 Jur. N. S. 999, Ex.

[3] It is the invariable practice not to allow the attorney to be changed unless the costs of the first attorney have been paid, and having sufficient security for his costs is no reason for departing from that rule. *Witt v. Ames*, 8 L. T. N. S. 425, Q. B. *Topping v. Searson*, 2 H. & N. 205.

[4] On an affidavit that an attorney desired to change his name, on account of family dissensions, and from no fraudulent motive,

X. The Bill of Costs and its Delivery, and Contracts Respecting Costs.[1]

XI. The Reference of the Bill to Taxation, and Effect of.[2]

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court allowed the name on the roll of attorneys to be altered. *Gimlet in re*, 7 L. T. N. S. 562, Q. B. An attorney who desires to change his name should apply to the court, and not to a judge at chambers. *Anon.* 11 W. R. 780, B. C.

[1] No particular form of heading is prescribed by sect. 37, 6 & 7 of Vic. c. 73. *Champ v. Stokes*, 30 L. J. Ex. 243; 6 H. & N. 635.

The proper mode of enforcing the delivery of a solicitor's bill is to serve the judge's order, and upon default an attachment will issue as of course. *Bowen, in re*, 9 Jur. N. S. 612. Where attorneys bring an action to recover the amount of their signed bill, which contains some items which they are not entitled to recover, the action may be maintained for the residue. *Pilgrim v. Hirckfelt*, 9 L. J. N. S. 288, Q. B.

A person who had no place of business of his own directed his communications to be sent to him at his attorney's office, where he occasionally called. A bill was left there for him more than a month before action, yet he did not actually receive it but a fortnight before :—*Held*, that there was evidence for the jury that the bill of costs was properly left there a month before action. *Spyer v. Bernard*, 8 L. T. N. S. 396, Exch.

An attorney who is appointed clerk to commissioners under a town improvement act, at a yearly salary, need not deliver a signed bill for business done by him as such clerk. *Bush v. Martin*, 2 H. & C. 311; 33 L. J. Exch. 17; 9 Jur. N. S. 851; 8 L. T. N. S. 509. An attorney may set off a claim for costs, notwithstanding no bill delivered. *Brown v. Tibbits*, 11 C. B. N. S. 855; 31 L. J. C. P. 206; 6 L. T. N. S. 385.

Solicitors to a company cannot recover costs in respect of business undertaken with full knowledge that it is beyond the powers of the company, nor can they appropriate money belonging to the company received by them on a general account to the payment of such costs. *Phœnix Life Assurance Office, in re*, 11 W. R. 984; 8 L. T. N. S. 728.

An objection that an attorney was not duly certificated at the time when certain work was done, comes too late, if made after taxation of costs. *Fullerton v. Parker*, 12 C. B. (N. S.) 246; 8 Jur. N. S. 1078; 31 L. J. C. P. 239; 10 W. R. 581; 6 L. T. (N. S.) 353.

An agreement between a solicitor and his client, that the former should have 5*l.* per cent commission on the gross amount of property recovered by him in addition to his costs is contrary to the policy of the law, and the solicitor must refund the amount received by him, though included in a settled account. *Pince v. Beattie*, 32 L. J. Chanc. 734. So an agreement that the attorney should be allowed to retain for his trouble half the sum recovered, entered into in France, and by the law of that country not illegal :— *Held*, that it amounted to champerty; the attorney was bound to hand over the amount recovered to his client, and was only entitled to retain his taxed costs. *Grell and another v. Levy*, 10 Jur. N. S. 210; 16 C. B. 73. *Earle v. Hopwood*, 30 L. J. C. P. 217; 9 C. B. 556. In the absence of a plea of "no signed bill delivered," it is competent to an attorney to rely upon a contract for a specific sum for business to be done, without producing a bill and showing charges, fair and reasonable, amounting to or exceeding the stipulated sum. *Scarth v. Rutland*, L. R. 1 C. P. 642: An attorney gave this memorandum, "I undertake to carry on this action on having cash provided for costs out of pocket, such costs not to exceed 15*l.*, including counsel's fee; not any witnesses' expenses :"—*Held*, that this was an engagement not in any event to charge the client more than 15*l.* *Moon v. Hall*, 17 C. B. (N. S.) 760; 11 L. T. N. S. 275. In an action by attorneys for the cost of a defence which failed, they having been absent on the day of trial, and some of the witnesses consequently not being in court :—*Held*, that they were entitled to recover notwithstanding the verdict had passed against their clients, unless the jury thought that the absence of the witnesses had caused the loss of the verdict, and so made the services wholly valueless. *Dunn v. Hallen*, 2 F. & F. 642. *Fletcher v. Winter*, 2 F. & F. 138.

Costs of mandamus refused to compel payment of costs by improvement commissioners. *Bush and another (executors, &c.) v. Beavan (Clerk, &c.)*, 7 L. T. N. S. 106.

[2] A. and B. compromised a suit, B. agreeing to pay A.'s costs, and any question on this was to be referred to an arbitrator who was named. A.'s solicitor delivered his bill of costs to B. Held that B. was entitled to a taxation by an order of court. *Hartley, in re*, 30 Beav. 620. Application of a solicitor, after an order of taxation, to withdraw a non-taxable item from his bill, refused. *Blakesley and Beswick, in re*, 32 Beav. 379. Under an order for taxation, as between solicitor and client, the costs of a consultation between the junior counsel and a Queen's counsel as to the frame of a bill in equity are properly allowed, without reference to the result of the suit. *Forster v. Davies*, 9 Jur. N. S. 741. A solicitor acting as electioneering agent not entitled to have bill taxed under statute. *In re Oliver*, 36 L. J. C. 261. Charges in an attorney's bill on the face of them unusual and excessive, may amount to "special circumstances" within the meaning of 6 & 7 Vic. c. 73, s. 37, so as to authorise a reference of the bill to the

XII. Lien of Attorney for his Costs.[1]

XIII. Contracts with Clients and Gifts to.[2]

master for taxation, although twelve months have elapsed since its delivery. *In re Robinson*, 37 L. J. Ex. 11; 3 L. R. Ex. 4. Where a bill of costs is produced for the first time on the day for completion of the transaction in respect to which the costs are charged, and an opportunity for taxation is requested, but refused, and payment is made that amounts to pressure; and if there appears a substantial ground for taxation, taxation ought to be allowed. *In re Newman*, 2 L. R. 2 Ch. Ap. 707; 36 L. J. 843.

Costs between party and party include plaintiff's expenses of bringing up to town the defendant's witnesses for cross-examination, though no cross-examination in fact had, and costs of a short-hand writer's notes, but not costs of attendance at the hearing of the plaintiff's country solicitor, but this is in the master's discretion, 7 L. T. (N. S.) 659.

Monies specifically paid by a client to his solicitor for counsel's fees and stamps as they were required:—*Held*, properly included in the solicitor's bill, in calculating the sixth on a taxation. *Metcalfe, in re*, 30 Beav. 406. Under the usual taxation order, a solicitor is entitled, in the absence of negligence or improper conduct, to be allowed all monies paid out of pocket. *Page, in re*, 9 Jur. N. S. 1116; 11 W. R. 584; L. T. (N. S.) 231, R.

A trustee who acted as solicitor for himself, held entitled as against the plaintiff to his full costs of defending an unsuccessful suit to set aside the trust deed. 9 Jur. 1119.

Charges in a bill, apparently excessive, and alleged to be overcharges, sufficient to authorise the court, under 6 & 7 Vic. c. 3, s. 37, to direct the bills to be taxed more than twelve months after delivery, although one item complained of was sworn to have been a mistake. *Hook, in re*, 3 Giff. 372; 8 Jur. N. S. 875. Where a bill is paid, the onus of proving overcharges is thrown on the client. *Towle, in re*, 30 Beav. 170. The summary jurisdiction by petition does not exclude the right of a client to file a bill against his solicitor for a general account. *O'Brien v. Lewis*, 9 Jur. N. S. 1116; 8 L. T. (N. S.) 231 R.

[1] Plaintiff, who was an infant, discharged defendant, who had been taken on a *ca. sa.* upon his giving up to plaintiff a pawn-ticket for a diamond pin. Plaintiff redeemed the pin; and his solicitor, whose costs had not been paid, claimed the pin in part payment of his costs, but refused to pay what was paid on redemption:—*Held*, refusing a rule, that defendant was not entitled to the pin unless he paid the redemption money. *Langley v. Headland*, 19 C. B. (N. S.) 50; 34 L. J. 583. An attorney's right of lien for his costs, on a judgment recovered by his client, is subject to the right of the parties to the action to make a *bonâ fide* compromise; the lien may prevail against a collusive compromise. *Brunsdon v. Allard*, 2 El. & El. 19. Where a solicitor recovered an estate for an infant, the court, on the application of the solicitor, on the infant attaining his majority, made a declaration that the costs remaining unpaid should, under 23 & 24 Vic. c. 127, c. 127, s. 28, be a charge upon the estate. *Bonser v. Bradshaw*, 9 Jur. N. S. 1048; 9 L. T. N. S. 195. An attorney has a lien for his costs on a judgment recovered by his client, and the court will lay hold of the fund where it exists, and when it does not thereby set aside any arrangement of the parties. *See Slater v. Sunderland (Mayor, &c.)*, 9 L. T. (N. S.) 422. *In re Moss*, 2 L. R.; Eq. 345; 35 L. J. 554. And he is entitled to priority in respect of his lien over a judgment-creditor who has obtained a charging order before the solicitor. *Haymes v. Cooper, Cooper v. Jenkins*, 10 Jur. N. S. 303; 33 L. J. Chanc. 488; 10 L. T. N. S. 87; *see O'Brien v. Lewis*, 4 Giff. 396. Where the directors of a company carry on a business not authorised by the deed of settlement, and costs are thereby increased, the solicitors of the company have no lien for their costs on the papers of the company. *Phœnix Life Assurance Company, in re ex parte Howard and Dollman*, 1 H. & M. 433. An attorney was declared entitled to a charge under 23 & 24 Vic. c. 127, s. 28, upon the land recovered by him in ejectment; his client having died since the action. *Seaman* or *Sleeman, ex parte; Wilson v. Hood*, 10 Jur. N. S. 592; 33 L. J. Exch. 204; 10 L. T. (N. S.) 345.

The courts exercise equitable jurisdiction where there is collusion between parties to cheat attorney of his lien. *See Nyman v. Bray and Ward, ex parte Jay*, 7 L. T. (N. S.) 328; *Games, ex parte*, 3 H. & C. 294. In an action of tort the defendant may settle with plaintiff pending a rule for a new trial. *Sullivan v. Pearson*, 3 L. J. N. 258.

[2] It is an established rule that a solicitor shall not, in any way, in respect of any transactions between him and his client make gain to himself at the expense of his client, beyond his just and fair remuneration. *Tyrrell v. Bank of London*, 10 H. L. Cas. 26; 8 Jur. N. S. 849; 31 L. J. 369. *Gibbs v. Daniel*, 4 Giff. 1; 9 Jur. N. S. 636. *Gresley v. Mousley*, L. J.; 3 De G. F. & J. 433. Where an attorney takes a security, or makes a purchase from a client, it is incumbent on him to prove the advance or payment of the money by some other evidence than the instrument creating the security or the conveyance. *Gresley v. Mousley*, 8 Jur. N. S. 320; 10 W. R. 222; 6 L. T. N. S. 86, L. J.

A gift by a client to his solicitor is contrary to public policy, and void. *O'Brien v. Lewis*, 9 Jur. N. S. 521; 32 L. J. 569; 8 L. T. N. S. 179. *Walker v. Smith*, 29 Beav. 394.

XIV. Partnership Between.[1]

XV. Acting as Advocate. *See* ante p. 40.—*Post*, tit. Barrister, County Court.

ATTORNEY GENERAL.[2]

ATTORNMENT.[3] 1 Ab. 63. *See* Distress; Landlord and Tenant.

AUCTION, Sale by. 2 Ab. 63. *See* also Auctioneer; Frauds, Statute of, Horses; Vendor and Purchaser; Warranty.

(A) *Particulars and Conditions of Sale and Effect of Misrepresentation therein.*[4]

An agreement between a solicitor and a client that for a certain fixed salary the solicitor will devote himself exclusively to the business of the client, taking his salary in lieu of fees, is not contrary to the policy or spirit of the law. *Galloway v. Corporation of London*, 4 L. R. Eq. 90. Nor in a solicitor agreeing to act professionally for a stipulated sum; yet, if he be obliged to sue for the recovery of it, he should first deliver a signed bill, and he can only recover the stipulated sum if the taxed bill amounts to it, but cannot recover more. *Scarth v. Rutland*, 1 L. R. C. P. 642.

[1] *Primâ facie*, in articles of partnership, the emoluments derived from the office of a clerkship to the guardians of a union do not fall within the ordinary description of profits of an attorney. *Collins v. Jackson*, 31 Beav. 645.

One of a firm of solicitors received a sum of money to be applied in compounding with a client's creditors, and a receipt given in the name of the firm; the partner who received the money absconded with it:—*Held*, that the other member of the firm could not demur, on the ground that the receipt of the money for such purposes was not within the scope of the partnership business. *Atkinson v. Mackreth*, 2 L. R. Eq. 570; 35 L. J. (N. S.) Chanc. 624; 14 W. R. 883; 14 L. T. (N. S.) 722. *See re Moss*, 2 Law. Rep. Eq. 345; 35 L. J. 554, Ch.; 12 Jur. N. S. 557; 14 L. T. (N. S.) 536. A member of a firm of attorneys has no implied authority to bind his co-partners by a post-dated cheque, drawn in the name of the firm. *Foster v. Macreth*, 2 L. R. Exch. 163; 36 L. J. Exch. 94; 16 L. T. (N. S.) 23. *See Alliance Bank v. Tucker*, 17 L. T. (N. S.) 13.

[2] May elect as to venue on an information for receiving of dues on goods imported into duchy of Cornwall. *Attorney General v. Crossman*, 1 L. R. Ex. 381; 35 L. J. Ex. 215.

[3] The assignees of a bankrupt may maintain an ejectment against him on obtaining a conveyance from a party to one he has attorned. *Cooper v. Land*, 14 L. J. 267.

[4] By the conditions of sale relating to leaseholds, it was stipulated that the production of the last receipt should be conclusive evidence that all the covenants had been performed:—*Held*, that the production of such a receipt prevented the purchaser from taking the objection that the lease had been forfeited by reason of the dilapidated state of the premises. *Bull v. Hutchens*, 32 Beav. 615. Conditions of sale of leasehold property provided that the vendors should pay all outgoings up to the half-quarter day, when the purchase was to be completed:—*Held*, that under the term "outgoings," the half-quarter's rent was payable by the vendors. *Lawes v. Gibson*, 35 L. J. Chanc. 148. A house put up for sale by auction was described in the particulars of sale as let at a certain rental. By one of the conditions it was provided that if any error should appear in the particulars it should not annul the sale, but a reasonable compensation should be given or taken, such compensation to be settled by two referees, one to be appointed by either party:—*Held*, that the condition was not restricted to errors discovered before the completion of the purchase; that the settlement of the amount of compensation by the referees was not an arbitration within the meaning of sections 12 & 13 of the Act 1854, and therefore the purchaser's referee alone could not act for both parties. *Box v. Helsham*, 36 L. J. Ex. 20. To entitle the vendor to rescind the contract of sale under the condition, that if the purchaser shall insist on any objection as to the title, &c., which the vendor shall be unable or unwilling to remove, the vendor may by notice rescind the sale; the vendor must show that the purchaser insisted on the objection after he was told of the vendor's inability or unwillingness to remove it. *Duddell v. Simpson*, 1 L. R. Eq. 578; 34 L. J. C. 70. The hull of a stranded ship was sold by auction, the conditions were attached to the catalogue, having been read out before the sale, the purchaser signed a memorandum of purchase which referred to conditions of sale "on the other side," without reading these conditions, which differed from those read out. The vendor afterward brought an action upon a condition as "on the other side," not agreeing with the conditions read out:—*Held*, the action could not be maintained. *Page v. Cowasjee Eduljee*, 1 L. R. P. C. App. 127. Where, on a sale of real estate, the solicitor of the vendor receives the deposit, he has not, in the absence of any stipulation to that effect, any duty, like that of an auctioneer, to the vendee, and has no right to retain the deposit as against the vendor, pending the completion of the sale. *Edgell v. Day*, 1 H. & R. 8; 35 L. J. C. P. 7; 13 L. T. (N. S.) 328.

(B) *Employment of Puffers at Auctions, and Bribing not to Bid.*[1]

AUCTIONEER. 2 Ab. 65. *See* Abstract of Title, vol. i. p. 63; Principal and Agent; Sale; Stamp; Statute of Frauds; Vendor and Purchaser.

(A) *License to be obtained by*, sec. 27 & 28 Vic. c. 56, s. 14, 29 & 30 Vic. c. 64.[2]

(B) *Charges of and Payments to.*[3]

(C) *Actions by and against.*[4]

AUDITÅ Querelâ.[5]

AUTERFOIS Acquit.[6]

A. paid B. a sum of money not to bid at a public auction. B. attended the sale and did not bid. A. bought the property:—*Held*, that A. was entitled to a decree for specific peformance against the vendors. *Heffer v. Martyn*, 36 L. J. Chanc. 372.

[1] A puffer at an auction is a person who, though the property may be knocked down to him, is not bound to complete. *Shimmin v. Bellew*, Ir. Rep. 1 Eq. 289. Admitting the rule in equity to be, that where property real is sold by auction, not announced as a sale "without reserve," the vendor may fix a reserved bidding or employ a person to bid, yet this does not justify fictitious biddings on behalf of the vendor by more than one person. *Mortimer v. Bell*, 1 L. R. Ch. Ap. 10; 3 W. R. 569.

Upon a sale of goods by auction, where the highest bidder is to be the purchaser, the secret employment of a puffer on behalf of the vendor is a fraudulent act, and vitiates the transaction. *Green v. Baverstock*, 14 C. B. (N. S.) 204; 32 L. J. C. P. 181; 8 L. T. (N. S.) 360; 10 Jur. N. S. 47. *Mortimer v. Bell*, 1 L. R. Ch. 25. The act 30 & 31 Vic. c. 48, (commenced 1 August, 1867), enacts, by s. 3, that auctioneer shall mean any person selling any land by public auction, land under any interest therein, and puffer a person appointed to bid on the part of the owners. By s. 4, where sales are invalid in law, by reason of the employment of a puffer, such sales to be also invalid in equity; that a sale invalid at law shall be invalid in equity, leaves the rule of law altogether undisturbed, but imposes it on the courts of equity. By s. 5, where the particulars or conditions of sale of land state that it will be sold without reserve, it shall not be lawful for the sellers to employ any person to bid at the auction or for the auctioneer to take knowingly any bidding from any such persons. By sect. 6, where the particulars or conditions declare the sale to be subject to the right of a seller to bid, he may, or any one on his behalf, bid at such auctions in such manner as he may think proper. By sect. 7, the practice of opening biddings by order of chancery, except on grounds of fraud, is to be discontinued. By sect. 8, court of chancery, in other respects excepted from operation of acts, such act not to extend to Scotland. It is not illegal for an intending purchaser at an auction of real property to bribe another person not to bid against him at the sale; and specific performance was decreed on a bill by the purchaser in such a case, with costs. *Heffer v. Martyn*, M. R.; 36 L. J. Ch. 372.

[2] 50 Geo. 3, c. 91, s. 7, prohibiting hawkers and other trading persons from selling by auction, repealed, so far as regards the selling by auction by any trading or other person duly licensed as an auctioneer. 29 & 30 Vic. c. 64, s. 12.

[3] Payment by a bill of exchange to an auctioneer, is not a valid payment for the purpose of discharging the debtor. *Williams v. Evans*, 1 L. R. Q. B. 352; 35 L. J. Q. B. 111; 13 L. T. (N. S.) 153.

A solicitor, acting with perfect *bona fides*, employed an auctioneer, but without inquiring his terms; and the auctioneer deducted his commission from the deposit, and charged the same to his client accordingly. The master afterwards disallowed the amount as excessive, and allowed only a rate equal to that given in bankruptcy:—*Held*, that the auctioneer was entitled to the full amount as deducted by him. *Page, in re*, 9 Jur. N. S. 1116; 8 L. T. (N. S.) 231.

[4] In an action by an auctioneer in his own name, it is a question for the jury whether the contract was made with him. *Jukes v. Marsh*, 34 L. J. 2 B. 177. Where an auctioneer, without disclosing his principal, advertises a sale without reserve, he personally contracts that there shall be a sale without reserve. *Mainprice v. Westley*, 6 B. & S. 420; 34 L. J. 2 Q. B. 29.

[5] The court refused to order a writ of *auditâ querelâ* to be issued upon an ex parte application. *Troop v. Ricardo*, 9 Jur. N. S. 887; 11 W. R. 1014; 8 L. T. (N. S.) 757, R.; 33 Beav. 122.

[6] A party is not entitled to be acquitted upon a second indictment on the ground

AUTERFOIS Convict.[1]

AUTHORS AND PUBLISHERS.[2] *See* Copyright; Libel; Newspaper.

AVERAGE. *See* also Insurance; Salvage; Ship and Shipping.

I. General or Petty Average, p. 47.

II. Pleadings Connected with, id.

I. General or Petty Average.

(A) *What is.*[3]

II. Pleadings Connected with.[4]

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that the charge ought to have been included in the first indictment. *Reg. v. Knight*, 1 L. & C., C. C. 378; 9 Cox C. C. 437; 9 L. T. (N. S.) 808.

[1] Where a person has been summoned before justices for an assault by the party assaulted, convicted and sentenced, and after the conviction the prosecutor died from the result of the same assault, the former conviction, &c., affords no defence to an indictment for manslaughter, the words "same cause" being held to be equivalent to "same accusation." *Reg. v. Morris*, L. R. C. C. R. 90; 36 L. J. M. C. 84.

[2] An agreement by a publisher not to publish, in future, a magazine of a particular description, is not void as a restraint of trade. *Ainsworth v. Bentley*, 14 W. R. 630.

[3] Deck cargo (timber) lawfully laden pursuant to charter-party, having broken adrift in stormy weather, and impeding the navigation and endangering the safety of the vessel, was necessarily thrown overboard:—*Held*, that the shipper was entitled to claim general average in respect thereof, as against the shipowner. *Johnson v. Chapman*, 19 C. B. N. S. 563; 35 L. J. C. P. 23; *Carr v. Royal Exchange Assurance Company*, 12 W. R. 127, Q. B. Action on valued policy. The ship being damaged by a storm at sea went into port, and was moored to the pier for the purpose of repairs; while there, she sunk under the effects of another storm. The shipowner gave notice of abandonment:—*Held*, the cargo was deemed liable for general average, which, by lessening the expense of raising the ship, prevented a constructive total loss. *Kemp v. Halliday*, 34 L. J. (N. S.) 233, Q. B.; 35 L. J. 156. A clipper sailing ship, fitted with an auxiliary screw, being on her voyage from Melbourne to England, came into collision with an iceberg, and received such damage that her sailing power was practically destroyed. By means of her screw and her steam power she reached Rio. The expense of repairing her at Rio would have been so great that the master properly determined to have her temporarily repaired, so as to bring her home under steam. It was necessary for this purpose to purchase coals at Rio and at Fayal, and the ship eventually reached home. The defendants were the owners of a quantity of gold on board the ship:—*Held*, there was no right to charge this expense to general average. *Wilson v. Bank of Victoria*, 36 L. J. Q. B. 89; 16 L. T. (N. S.), 9; 2 L. R. Q. B. 203. *Oppenheim v. Fry*, 8 L. T. (N. S.) 385, Q. B. Policy on chartered freight, free of particular average, "unless the ship be stranded, sunk, or burnt," with the usual "sue labour and travel" clause. The ship was wholly disabled by perils of the sea, and the master, not abandoning the freight, transhipped the cargo and forwarded it at considerably less than the original freight:—*Held*, these expenses of transhipment, forwarding, &c., were not "particular average," but "particular charges," and recoverable by the owner against the underwriter. *Kidstone v. Empire Marine Insurance Company*, L. R. 1 C. P. 535, ed. 357; 35 L. J. 250, 36 ed. 156. Where a charterer pays part of the freight in advance, which, under the terms of the charter-party, he could not recover, though the ship did not reach her destination, that is a risk of his, and he is liable to general average in respect of such part of the freight. *Trayes v. Worms*, 11 Jur. N. S. 639.

[4] To an action by a shipowner against a shipper of goods to recover his proportion of average loss, he pleaded that his promise was subject to a condition, viz., that the ship was seaworthy at the commencement of the voyage, and that she was not seaworthy:—*Held*, a bad plea, *Schloss v. Heriot*, 14 C. B. N. S. 59; 8 L. T. (N. S.) 246; 32 L. J. C. P. 211.

B.

BACKING Warrants. 31 & 32 Vic. c. 107.

BAIL Below, Deposit in Lieu of Bail and Undertaking to put in.[1] *See* Affidavit; Arrest; Error.

BAIL on Appeal or Error.[2] *See* Error.

BAIL in Criminal Proceedings.[3] 2 Ab. 94. *See* by Coroner for Manslaughter, &c., 22 Vic. c. 33. By Justices, 7 Geo. 4, c. 44; 5 & 6 W. 4, c. 33; In error, 15 & 16 Vic. c. 151; 22 id. c. 16, s. 5.

BAILMENT.[1] 2 Ab. 98. *See* also Bankers; Carrier; Detinue; Ferry; Innkeeper; Lien; Pawn; Pawnbroker; Principal and Agent; Salvage; Trespass; Trover; Warehouseman; Wharfinger.

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[1] Upon his arrest in January 1863, the defendant deposited with the sheriff the sum indorsed upon the writ, together with 10*l.* costs, and was discharged, the sheriff paying the deposit into court. The defendant being subsequently adjudicated a bankrupt, was prevented from perfecting special bail, or paying in the additional sum in lieu thereof, under sect. 2, of 7 & 8 Geo. 4, c. 71; and, upon motion for payment of deposit out of court to the plaintiff:—*Held*, that notwithstanding the intervening bankruptcy of the defendant, and the claim made to the money by his assignees, the plaintiff was entitled, under the express words of sect. 2 of 43 Geo. 3, c. 46, to have the deposit paid out of court to him. *Cooke v. Bell*, 8 L. T. (N. S.) 431, Exch. *See Dakin v. De Mesne*, 3 L. R. Q. B. 18.

A judgment having been recovered against A. in a county court, he was arrested by the bailiff for non-payment. The judgment was for 34*l.*, but the creditor authorised the bailiff to accept 17*l.* whereupon K. told the bailiff that if he would release A. he would produce him on the following Saturday or pay the 17*l.*:—*Held*, that this was not a promise to answer for the debt of another, so as to bring it within sect. 4 of the Statute of Frauds. *Reader v. Kingham*, 7 L. T. (N. S.) 789, C. P.

[2] The court or judge has a discretion to dispense with bail on appeal as well as with bail in error. *Beavan v. Witmore*, 15 C. B. 340.

[3] At the request of a defendant the plaintiff became bound in a recognisance of bail for the appearance of the defendant's daughter at the Central Criminal Court, the defendant having verbally promised the plaintiff to indemnify him against all liability. The daughter did not appear, and the recognisance was estreated and the plaintiff was obliged to pay the amount; this was held not a promise to answer for the debt or default of another within the Statute of Frauds, (29 Car. 2, c. 2, s. 4), and need not be in writing. *Cripps v. Hartnoll*, 32 L. J. Q. B. 381; 8 L. T. (N. S.) 765; 10 Jur. N. S. 200, Ex. Ch.

[1] What is reasonable care, skill, and diligence varies in the case of a gratuitous bailee, and a bailee for hire; but the failure on the part of a bailee to exercise reasonable care, skill, and diligence, is in law gross negligence. *Beale v. South Devon Railway Company*, 11 L. T. (N. S.) 184. Where a bankrupt had deposited dock warrants for brandy in dock as security for a loan; and it was agreed that the pledgee might sell the brandy if the loan was not repaid on the 29th January. The pledgee sold the brandy on the 28th January, and delivered the dock-warrants to the purchaser on the 29th, and the purchaser took possession on the 30th. The bankrupt would not have redeemed the warrants:—*Held*, that the sale and delivery of them was a conversion by the pledgee. *Johnson v. Stear*, 15 C. B. (N. S.) 330; 11 Jur. N. S. 99; 33 L. J. C. P. 130; 9 L. T. (N. S.) 864. The damage recoverable for the conversion was the loss actually sustained by the pledger, and that, in measuring the damage, the interest of the pledgee in the pledge at the time of conversion was to be taken into account. See *Donald v. Suckling*, 35 L. J. Q. B. 232.

The estoppel against a bailee from disputing the title of his bailor, and setting up a *jus tertii*, ceases when the bailment on which the estoppel is founded is determined by what is equivalent to an eviction by title paramount. It is not enough that the bailee has become aware of the title of a third person, or that an adverse claim is made upon him, so that he may be entitled to an interpleader. *Biddle v. Bond*, 6. B. & S. 225; 34 L. J. Q. B. 137; 12 L. T. (N. S.) 178; See *Bourne v. Farbrooke*, 34 L. J. C. P. 164.

A. contracted to hire a barge of B., the contract containing a stipulation that "fair wear and tear were to be allowed by the owner," and that, when delivered up, the barge was "to be in good working order, with all her rigging, gear, and implements complete:" this is not an absolute engagement on the part of the hirer to deliver up the barge in good working order, without

BANKERS & BANKING COMPANIES. 2 Ab. 119. See Grant on Bankers by Fisher; see Joint Stock Companies; Lien; Payment; Principal and Agent; Set-off.

I. Of the Duty of Bankers with Reference to their Customers, p. 49.

II. Of Bankers' Cheques, p. 50.

III. Letters of Credit and Circular Notes, p. 50.

IV. Lien of, p. 50.

V. Banking Companies, p. 51.

I. Of the Duty of Bankers with Reference to their Customers.[1]

reference to her condition at the commencement of the hiring. *Schroder v. Ward*, 13 C. B. (N. S.) 410. In the absence of an express contract, the liability of a sub-bailee to his bailor is a question for the jury. *Von Menden v. Pyne*, 4 F. & F. 533. Where goods are deposited as security for the repayment of a loan of money on a future day certain, though without any express stipulation that the pawnee shall have power to sell in default of payment on the day,—*Semble*, that such a power of sale is implied by law from the nature of the transaction. *Pigot v. Cubley*, 15 C. B. (N. S.) 701; 10 Jur. N. S. 318; 33 L. J. C. P. 134; 9 L. T. 804. But where there is no stipulated day for payment, or where the stipulated time has been rendered indefinite by a subsequent agreement between the parties, it is not competent for the pawnee to sell without a proper demand and notice. *Ib. Martin v. Reid*, 30 L. J. C. P. 126; 11 C. B. (N. S.) 730. When a bailor mortgages the chattels bailed, and the mortgagee has a right to demand possession from the bailee, and does demand it, the bailee may refuse to give the chattels up to the bailor. *The European Company v. The Royal Mail S. P. C.* 30 L. J., C. P. 246. The gratuitous loan of a shed for a particular purpose bears no analogy to a bailment of personal chattels, but is a mere license to use the shed revocable at any time. *Williams v. Jones*, 3 H. & C. 256; 11 L. T. 108. *Woodman v. Joiner*, 10 Jur. N. S. 852; 3 H. & C. 602, Exch. A bailee may be bound to take care of the chattels, but he is not bound to incur a pecuniary liability to procure an advantage for the subject of the bailment. *The 'Norway,'* 13 W. R. 1085. The owner of goods, let out by him in the ordinary course of trade, can recover in trover against a *bonâ fide* purchaser to whom the hirer has wrongfully sold them. *Marner v. Bankes*, 13 W. R. 62; 17 L. T. (N. S.) 147, C. P. To sustain a charge of larceny by a bailee it is necessary to prove some act of conversion inconsistent with the purposes of the bailment. *Reg. v. Jackson*, 9 Cox, C. C. 505. *Reg. v. Bunkall*, 1 L. & C. C. C. 371; 10 Jur. N. S. 216; 33 L. J. M. C. 75; 9 L. T. (N. S.) 778.

[1] The ordinary relation between a banker and his customers is merely that of debtor and creditor, and not of a trustee and *cestui qui trust*. *In re Agra and Masterman's Bank, ex parte Waring*, 33 L. J. C. 151.

In the absence of a special agreement a banker can only charge simple and not compound interest on advances. *Crosskill v. Bower—Bower v. Turner*, 9 Jur. N. S. 267; 32 L. J. Chanc. 540; 8 L. T. (N. S.) 135; 32 Beav. 8. Where a customer gets his banker to discount bills at a time when his account is largely overdrawn, and the amount is simply carried to the credit of his account, the bankers are holders for value, though no money was actually paid. *Carew, in re*, 31 Beav. 39. A payment by a customer of a bank can be appropriated by the bank to a debt due to the banker and his former partner, instead of to a debt due to the banker alone. *Snead v. Williams*, 9 L. T. (N. S.) 115, Exch. As between a banker and his customer, the mode in which the account has been habitually made out, will be viewed as evidence of an agreement that it should be taken in that way; and in the absence of any special agreement the custom of bankers is receivable for the purpose of determining the principle upon which the account is to be taken. *Mosse v. Salt*, 32 L. J. Chanc. 756. Bankers who have paid forged securities cannot charge their customers with the amount. *Woods v. Thiedmann*, 1 H. & C. 478. As to the effect of payments to bankers on current account to prevent operation of Statute of Limitations on a note in their possession. See *Hartland v. Jukes*, 1 H. & C. 667; 9 Jur. N. S. 180; 7 L. T. (N. S.) 902. Bankers cannot be held liable for breach of trust of customers unless connivance be shown. *Gray v. Johnston*, 3 H. L. 1.

A woman, with separate estate, joined with her husband in a note, payable on demand, to secure the balance against him at his banker's. The balance continued against him till his death, which happened seven years afterwards; and after that event she signed a note for the unsecured balance: *Held*, good consideration for the latter note. *La Touche v. La Touche*, 3 H. & C. 576; 11

II. Of Bankers' Cheques.[1]

III. Letters of Credit and Circular Notes.[2]

IV. Lien of.[3]

Jur. N. S. 271; 34 L. J. Exch. 85; 11 L. T. (N. S.) 773.

[1] Where a party, by means of a false pretence, or a promise, or condition which he does not fulfil, procures another party to give him a cheque or an acceptance in favour of a third person to whom he pays it, and who receives it *bonâ fide* for value, the giver remains liable on the cheque, &c.; because his acceptance imports value and liability *primâ facie*, and he can only relieve himself from his promise to pay the holder by showing that he is not a holder for value, or that he received the instrument with notice, or not *bonâ fide*. *Watson v Russell*, 3 B. & S. 34; 9 Jur. N. S. 249. The holder without endorsement of a draft payable to order, though taken by him *bonâ fide*, and for value, has no better title than the person from whom he took it; and such holder is affected by fraud, of which he has notice before he obtains the formal indorsement. *Whistler v. Forster*, 32 L. J. C. P. 161; 11 W. R. 648; 8 L. T. (N. S.) 317. A cheque with a penny stamp payable to order is not rendered void by being post-dated; the provisions of 55 Geo. 3, c. 184, s. 13, and 21 & 22 Vic. c. 20, being applicable only to drafts payable to bearer. *Whistler v. Forster*, 32 L. J. C. P. 161; 8 L. T. (N. S.) 317. And the holder of a cheque payable to A. or bearer, post-dated, may be enforced by him if he received it without notice. *Austen v. Bunyard*, 6 B. & S. 487; 36 L. J. Q. B. 217; 12 L. T. (N. S.) 452. So of a cheque given on conditions unknown to the holder. *Watson v. Russell*, 34 L. J. Q. B. 217; 12 L. T. (N. S.) 452. But a post-dated cheque, put into circulation with the express intention of its being held over till a subsequent day, is for all practical purposes a bill of exchange; and, therefore, one member of a firm of attorneys cannot bind the firm by drawing a post-dated cheque in the name of the firm without authority for purposes unconnected with the partnership business. *Hedley v. Bainbridge*, 2 W. R. C. B. 163. *Forster v. Mackreth*, 36 L. J. Ex. 94. When a cheque on a banker is paid over the counter, the property in the money has passed to the payee, and the bank has no right to retake the money upon finding that the customer's account was overdrawn. *Chambers v. Miller*, C. P.; 7 L. T. (N. S.) 856; 13 C. B. 125; 9 Jur. N. S. 626; 11 W. R. 236; 32 L. J. C. P. 30. *Key v. Mathias*, 3 F. & F. 279.

A cheque crossed in blank, being given in payment of a bill of exchange, was duly paid by the holder into his banker's, who, two days afterwards, presented it for payment, when it was returned dishonoured:—*Held*, as the crossing of the cheque was a direction to the holder to pay it only through a banker, the holder had done all that was required of him to comply with that request, by paying it into his bankers within a reasonable time. *Stringfield v. Lanezzari*, 16 L. T. (N. S.) 361. In an action against a banker for dishonouring a cheque, it is a question for the jury whether they had funds in their possesion at the time. *Brousby v. East London Bank*, 14 L. T. (N. S.) 463 C. P. *Whitaker v. Bank of England*, 1 C. M. & R. 744.

To make a valid gift of a cheque there must be a handing over to the donee, or a clear declaration of trust. *Jones v. Lock*, 11 Jur. N. S. 913; 1 L. R. Ch. 25. *Roberts v. Roberts*, 15 L. T. (N. S.) 260. Money given to the *bonâ fide* holders of a cheque cannot be reclaimed by the bankers even while the party is counting the amount on discovering that the drawer has no assets. *Chambers v. Miller*, 32 L. J. C. B. 30; 13 C. B. 125.

[2] An indorsee of a marginal letter of credit is not bound, in the absence of notice, to inquire whether the power is being used for the purposes for which the credit was opened. *Maitland v. The Chartered Bank of India*, 2 H. & M. 440. It is not obligatory on the holder of a circular note to cash it abroad, but he may, on reasonable notice, require repayment from the bankers who issued it, but the bankers cannot be called upon to refund the money while the note is outstanding. *Conflans Stone Quarry Company v. Parker*, 17 L. T. (N. S.) 283; 16 W. R. 127; 3 L. R. C. P. 1; 37 L. J. C. P. 51.

[3] See *M'Kenna, ex parte, in re Laurence*, 4 De G. F. & J. 629; 30 L. J. (N. S.) Bank. 20. As to set off see *Jeffreys v. Agra and Masterman's Bank*, 2 L. R. 2 Eq. 674; 35 L. J. Ch. 686; 34 Beav. 332.

A customer deposited with his bankers a deed or conveyance, including two distinct properties, giving to them at the same time a memorandum pledging one of the properties as security for a specific sum advanced, and also for his general balance:—*Held*, that as the deposit of the deed of conveyance was for the special purpose of giving a security upon one property only, the bankers could claim no general lien, by the custom of bankers, on the other property. *Wylde v. Radford*, 9 Jur. N. S. 1169; 33 L. J. Chanc. 51; 9 L. T. (N. S.) 471, V. C. K. A conveyance of land is not a security within the custom which gives to bankers a general lien on securities deposited by their customers. *Id.*

IV. Banking Companies.[1]

See 20 *&* 21 *Vic. c.* 49; 21 *&* 22 *id. c.* 91.[1] (1) *As to the Election of Directors, see* 7 & 8 *Vic. c.* 113; 19 *&* 20 *id. c.* 100. *As to Issuing Notes,* 27 *&* 28 *id. c.* 32.

BANK NOTES.[2] 2 Ab. 137.

BANK of England.[3] *See* Forgery; Stock; Stock-Brokers; Stock-Exchange.

BANKRUPTCY & INSOLVENCY. 2 Ab. *See* Set off.

I. Of the Court and Officers of the Courts and Protections.

(A) *The Court*, p. 53.

(B) *Registrars*, p. 53.

(C) *Official Assignees*, p. 53.

(D) *Messengers*, p. 53.

(E) *Practitioners*, p. 53.

II. Trading, and who may be Bankrupts, p. 54.

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[1] By (30 & 31 Vic. c. 29) contracts for the sale or transfer of any shares in joint-stock banking companies are to be null and void to all intents and purposes whatsoever, unless the numbers by which such shares are distinguished are set forth in the contract. Any person wilfully inserting any false number or entry in any such contract, will be guilty of a misdemeanour, and punishable accordingly. Joint-stock banking companies are bound to show their list of shareholders to any registered shareholder during business hours (from ten to four).

The object of the secrecy clause contained in bank deeds is only to prevent vexatious attempts to pry improperly into the affairs of the concern, and wherever a proper case is made out, a court of equity will not hesitate to make an order for inspection, *non obstante* the secrecy clause. *Birmingham Banking Company, in re*, 15 L. T. (N. S.) 203; 36 L. J. Chanc. 150.

In an action against a banker for disclosing the state of a customer's account, the question for the jury is whether, under the circumstances, it was justifiable. *Hardy v. Veasey*, 3 L. J. N. 38; 3 L. R. Ex. 107.

To an action against the manager of a joint-stock bank for negligence in advancing the money of the bank on improper and insufficient securities, the defendant pleaded a clause by which it was provided that none of the trustees or officers should be answerable for any loss, &c., by reason of the insufficiency of the securities, unless the same should happen in consequence of wilful neglect or default:—*Held*, a good defence. *Ward v. Greenland*, 19 C. B. (N. S.) 527. *The Bank of Upper Canada v. Bradshaw*, L. R. 1 P. C. 479. A joint-stock bank is liable for false representations made by its manager. *Barwick v. English Joint Stock Bank*, 36 L. J. Exch. 147; 2 L. R. Exch. 259; 16 L. T. (N. S.) 461. *S. P. Scott v. Dixon*, Liverpool Assizes, 1868.

A savings bank, the business of which was to receive deposits, allowing interest thereon, notice of withdrawal being required, and no cheques being payable on demand, is not a bank within the meaning of the winding-up acts. *In re The District Savings Bank, ex parte Coe*, 3 De G. F. & J. 335.

[2] An affidavit verifying the return of the issue by a banker of unstamped bills and negotiable notes under 9 Geo. 4, c. 23, may be sworn, either before a justice of the peace or before a commissioner. *Reg. v. Greenland*, 2 L. R. Q. B. 65; 36 L. J. M. C. 37; 15 L. T. N. S 589; 10 Cox, C. C. 377. Any one employed in a bank is a chief clerk within 9 Geo. 4, c. 23, for verifying such bank issues. *Reg. v. Greenland*, 36 L. J. M. C. 37; 15 L. T. (N. S.) 589; 10 Cox, C. C. 377; 1 L. R. C. C. R. 65.

Indictment against the manager and secretary of a bank, containing counts charging them with making and publishing false statements of the affairs of the bank, and conspiring together to do so, the prosecutors were put to elect on which counts they would rely, and having elected to rely on the counts for conspiracy:—*Held*, that it was not enough to prove that the defendants made and put forth false statements intended to deceive, unless they had entered into a precedent and fraudulent conspiracy to do so. *Reg. v. Burch*, 4 F. & F. 407.

[3] A. having entered an agreement with B. to become his partner in a business, sent by post to C., a creditor of B., half notes of the Bank of England towards payment of a debt of B.; before the second halves were sent the agreement between A. and B. was put an end to, and A. demanded back the half notes, which C. refused:—*Held*, that A. was entitled to recover the half notes, as he had not parted with the property in them, the transfer being inchoate only. *Smith v. Mundy*, 3 Ell. & Ell. 22.

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XX. Bankrupt Companies. *See* Joint Stock Companies.

I. Of the Courts, Officers of the Courts, and Practitioners.

(A) *Of the Court.*[1]

(B) *Registrars.*[2]

(C) *Official Assignees.*[3]

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[1] A resolution under the 110 s. 24 & 25 Vict. 134, for suspending proceedings in bankruptcy and winding up the estate: the proceedings are taken out of the Court of Bankruptcy, and its jurisdiction only continues for the purposes of discovery and granting the bankrupt's discharge. *Ex parte Wood*, 35 L. J. B. C. 134. The power to award damages applies to cases of bankruptcy, and not (in the absence of express provision in the deed) to cases of composition deeds. *Ex parte Wilmot, in re Thompson*, 36 L. J. Bank. 17; 16 L. T. N. S. 650.

The jurisdiction over trust deeds of creditors executed and registered in London under the 192nd sec. of the Act 1861 is confined to the court which would have adjudicated the bankruptcy and exercised jurisdiction over the estate. *Ex parte Cox*, 31 L. J. B. 49. See *ex parte Ruck*, 32 id. 9. The 3 sec. of 24 & 25 Vic. c. 134, confers jurisdiction in bankruptcy on the county courts, and subsequent sections prescribe the duty of the registrars and bailiffs. *See* General Orders, 23 Oct. 1862.

[2] A registrar acting as the deputy of the commissioner has power to grant orders of discharge in unopposed cases. Such orders ought to be signed by the registrar and not by the commissioner. *Lees, ex parte, in re Emberton*, 33 L. J. Bank., 25. *Hargraves v. Armitage*, 3 L. J. N. 269. And show upon the face of it that he was appointed by, and duly authorised to act for, the commissioner. *Morgan ex parte, in re Pennell*, 9 Jur. N. S. 881; 32 L. J. Bank. 61; 7 L. T. N. S. 778, C. Where the registrar of a county court of the district in which a debtor is in gaol, upon being satisfied that his debts do not exceed 300*l.*, has made an order of adjudication, and directed that it shall be prosecuted in the county court for the district in which the debtor had resided for the previous six months, the latter court has jurisdiction, notwithstanding the debts in fact exceed 300*l.* *Harrison, in re*, 1 H. & C. 819; 9 Jur. N. S. 338; 32 L. J. Exch. 159; 7 L. T. 829. Section 94 does not apply to a prisoner presenting a petition *in formâ pauperis*, and owing debts exceeding 300*l.* *Coombes, in re*, 3 B. & S. 296; 9 Jur. N. S. 572; 32 L. J. Q. B. 65.

[3] Official assignees and accountants in their reports ought to confine themselves to the facts and matters arising out of the accounts, and they ought not to mix up portions of a bankrupt's conduct, nor express any judicial conclusions thereon. *Fryer, ex parte, in re Fryer*, 10 L. T. N. S. 73. The provisional assignee of an insolvent debtor may sell his reversionary interests without an order of the court, under the 1 & 2 Vic. c. 110, s. 42, or under the 24 & 25 Vict. c. 134. *Sturgis v. Evans*, 2 H. & C. 364; 9 L. T. N. S. 774.

Where a retired official assignee omitted to close his accounts, or to deliver up his books, it was ordered that the balances due from and to the official assignee be paid into court, and his retiring salary suspended until the result of the inquiries was known. *Johnson, in re*, 9 L. T. N. S. 672, C. An official assignee having given his assent to the bringing of an action in his name jointly with that of the trade assignee, the action proving unsuccessful, the latter paid the costs:—*Held*, that he was entitled to sue the official assignee for contribution. *Bevan v. Whitmore*, 15 C. B. N. S. 433. One who has no other duty than to consent, will not be allowed his costs out of the estate.

(D) *Messengers in Bankruptcy and Bailiffs in County Courts.*[1]

(E) *Practitioners.*[2]

II. Trading, and who may be Bankrupts.[3]

III. Of the Several Acts which make a Person Bankrupt.

(A) *By Absenting himself.*[4]

(B) *Fraudulent Conveyance.*[5]

(D) *Fraudulent Preference.*[6]

Churchill, ex parte, in re Griffiths and in re Thorneycroft, 9 Jur. N. S. 33: 32 L. J. Bank. C.

[1] The trade assignee may render himself personally liable to the messenger or bailiff for his costs and charges, subsequent to the choice of assignee by an implied contract. Letters from the solicitor of the assignee to the messenger, giving directions touching the management, &c., of the property in his possession:—*Held*, to be such an interference as rendered the assignee personally liable. *Stubbs v. Horn*, 1 L. R. C. P. 56.

[2] The privilege given by the Bankruptcy Act 1861, s. 212, to solicitors to appear and plead personally in courts of bankruptcy is confined to solicitors appearing, as solicitors of the particular clients. *In re Broadhouse, ex parte Broadhouse*, 36 L. J. Bank. 29; 2 L. R. Ch. 655; 17 L. T. N. S. 126. And clerks to solicitors, though themselves solicitors, not being on the record, or named in the proceedings, cannot claim to appear as agents to their employers, and in this capacity exercise the statutory right. *Ib.*

[3] A person who works a slate quarry in the ordinary way upon lease from the owner, and sells the tools to the quarrymen, is not a trader within the meaning of the bankrupt laws. *In re Cleland*, 36 L. J. B. C. 33; 2 L. R. Ch. 466. Nor is a dealer in shares of joint-stock companies, but not as a general broker, a trader. *Ib.* It is no objection to an adjudication of bankruptcy in a district court of bankruptcy against a trader, that the acts of trading were out of the district. *Ib.* An infant, whether a trader or not, is liable to the operation of the bankrupt laws. *Smedley, in re*, 10 L. T. N. S. 432. It is questioned whether a married woman, apart from custom, is within the operation of the bankrupt laws; or whether, having been adjudicated bankrupt upon her own petition, she is estopped from questioning the validity of the adjudication. *Reg. v. Robinson*, 16 L. T. N. S. 605; 15 W. R. 966; 10 Cox. C. C. 467; 1 L. R., C. C. R. 80; 36 L. J. M. C. 78. A sequestration issued by a judgment creditor of a beneficed clergyman who becomes bankrupt, is entitled to priority over a subsequent sequestration issued by his assignees under the bankruptcy. *Hopkins v. Clark*, 10 Jur. N. S. 439; 33 L. J. Q. B. 93. On appeal, 10 Jur. N. S. 1071; 33 L. J. Q. B. 334, Ex. Ch. The judgment creditor in such case is not a "creditor having security for his debt," within the meaning of sec. 184 of the 12 & 13 Vic. c. 106. *Ib.*

[4] A trader absented himself for three or four days from his place of business, and in his absence a bill was presented for payment and was dishonoured. The bankruptcy was annulled, the bankrupt swearing that his absence was occasioned by an attempt to get up evidence of perjury against one of his workmen, and to obtain pecuniary assistance. *Barney, ex parte, in re Horton*, 32 L. J. Bank. 41, C.; 9 Jur. N. S. 286.

[5] A trader, by deed, reciting that he was unable to pay his debts, conveyed real estate to a trustee, to pay all costs, charges, and expenses, to his solicitor, and to apply the residue in payment of the debts of such of his creditors as should execute the deed rateably:—*Held*, that it was an act of bankruptcy. *Wensley, ex parte, in re Wensley*, 9 Jur. N. S. 315; 32 L. J. Bank. 23; 11 W. R. 241; 7 L. T. (N. S.) 548, C. So is a bill of sale by a trader of all his stock in trade to secure an antecedent debt and all future advances. *Lacon v. Liffen*, 4 Giff. 75; 9 Jur. N. S. 13; 9 Jur. N. S. 477; 32 L. J. Chanc. 315; 7 L. T. N. S. 774, C. *Whitmore v. Claridge*, 9 L. T. N. S. 451, Exch. Cham.

An assignment, under pressure, by a trader to certain creditors, not of the whole of his property, but with a substantial exception, is not an act of bankruptcy. *Smith v. Timms*, 1 H. & C. 849; 9 Jur. N. S. 1285; 32 L. J. Exch. 215. But if the property taken out of his possession would prevent his carrying on his trade, it is an act of bankruptcy, although the assignee promises verbally not to enforce the assignment. The preventing an equitable distribution of assets amongst creditors is fraud within the act. *Young v. Fletcher*, 13 W. R. 722. *Woodhouse v. Murray*, 7 L. R. Q. B. 634; 36 L. J. 289.

[6] An assignment by a trader of all his property, for the purpose of raising money to enable him to go on with his trade, is not an act of bankruptcy. Nor will the secret intention of the trader to apply the money in payment of certain creditors in preference to others make it an act of bankruptcy if the person advancing the money was no party to the fraud. *Ex parte Colemere, in re Colemere*, 35 L. J. Bank. 8. A., an innkeeper at Sheerness, being indebted to B. under what the jury thought sufficient pressure, on the 30th of May employed his own attorney to prepare a bill of sale of all his effects in favour of B., to se-

(E) *Non-Payment of Traders'-Summons.*[1]

IV. The Petition and Petitioning Creditor's Debt.[2]

cure an existing debt and a small further advance (the amount being about a fair equivalent for the value of the goods), and sent it to B. On the 10th of July B. sent a man to A.'s premises to paint out A.'s name, and on the 13th went down to Sheerness and took possession, leaving A. there to manage the concern on his behalf. On the 15th A. filed a petition in bankruptcy, and on the 16th was duly adjudged bankrupt. In an action by the assignees to recover the value of the goods thus conveyed, the jury having found that the transaction was *bonâ fide*, and the possession was really and notoriously taken by B. prior to the bankruptcy:—*Held*, that the transaction could not be avoided, either as an act of bankruptcy (there being no relation) or as a fraudulent preference; and that the goods were not in the order and disposition of A. at the time of his bankruptcy. *Shrubsole v. Sussmans*, 16 C. B. N. S. 452. *Mercer v. Peterson*, 37 L. J. Q. B. 54, Ex. Ch.

[1] An action was brought under the Bills of Exchange Act, by indorsee against an acceptor. The defendant obtained leave to defend the action. The debtor was then served with a trader debtor summons, and desiring to contest the claim, was ordered by the commissioner to give security by bond, with two sureties:—*Held*, that the commissioner had exercised a proper discretion, with which the court would not interfere. *Ruck, ex parte, in re Ruck*, 9 Jur. N. S. 683; 8 L. T. (N. S.) 102, C. A judgment-debtor summons under the 76th section of the 24 & 25 Vic. c. 134, cannot properly be issued against a member of the House of Commons. *Nesbitt, ex parte*, 8 L. T. (N. S.) 212. S. P. *Wright, ex parte*, 12 W. R. 59; 9 L. T. (N. S.) 349. S. P. *Gibbon, ex parte*, 8 L. T. (N. S.) 552. Where a trade-debtor summons is dismissed for informality, the creditor cannot make use of the particulars of demand already filed, in order to support another summons. He must file fresh particulars, and serve a fresh notice requiring payment. *Anon.* 15 W. R. 882. Where a creditor has taken out a summons against his debtor, under 12 & 13 Vic. c. 106, s. 78, and filed an affidavit stating the debt to be of an amount which is greater than the amount he subsequently recovers by action, and the debtor makes it appear to the court that the creditor had no reasonable or probable cause for stating the amount at that mentioned in the affidavit, the debtor is entitled to the costs of the action, and the court has no discretion in the matter. *Falconar v. Mackenzie*, 36 L. J. Exch. 222; 2 L. R. Exch. 248; 16 L. T. (N. S.) 630.

[2] Petitioning debt must not be an equitable but a legal debt. *In re Blencowe*, 35 L. J. B. C. 18. Hence an order of the Court of Chancery to pay a sum of money, interest on money lost by means of a breach of trust, is a mere equitable debt, and does not constitute a good petitioning creditor's debt. Quære, whether the debt being in respect of interest which would have accrued in the years 1864 and 1865, renders it a debt contracted after the passing of the Bankruptcy Act, 1861, id. *Ex parte Blencowe. In re Blencowe*, 1 L. R. Ch. Ap. 393. A limited joint-stock company may petition. 3 L. R. Ch. 252. In the case of a non-trader, the petitioning creditor's debt must be a debt arising under a contract which itself is made or arises either from the act of the parties or from the operation of law, after the passing of 24 & 25 Vic. c. 186. *Harding ex parte, in re Williams; Canwell ex parte in re Vaughan*, 10 Jur. N. S. 412; 33 L. J. Chanc. 26; 1 L. R. H. L. 9; 10 L. T. N. S. 117, 316, C. As to service of the petition see *re Calthorpe*, 3 L. R. Ch. 252. A debtor is entitled to petition against himself, though he only owes money to one creditor. *In re Eusby*, 35 L. J. B. C. 23. The sections 93 and 97 not being clear as to whether a fully secured creditor should be inserted in the schedule of a debtor petitioning for adjudication against himself, the court reversed decision of the commissioner, who had annulled the adjudication on the ground of the omission; the court being of opinion that there was no fraud, and that it was at liberty to relax the general order. *Ex parte Sampson; In re Cobham*, 1 L. R. 1 Ch. Ap. 476. An adjudication had been granted on the joint petition of two creditors. The debt of one of them was subsequently disallowed. The other creditor thereupon increased the amount of his claim to a sum exceeding 50*l.*:—*Held*, that the debt being originally insufficient, the increased claim would not support the adjudication. *Brown ex parte, in re Brown*, 10 Jur. N. S. 739; 33 L. J. Bank. 51; 10 L. T. N. S. 679, C. The proper course in such a case is either to allow the petition to be amended, or to proceed upon a new adjudication. *Ib.* An adjudication of bankruptcy may be made on the application of a creditor other than the petitioning creditor, without his presenting a new petition. *Ex parte Harris; In re Ash*, 1 L. R. Ch. Ap. 469; 35 L. J. Bank. 21. The court will not direct the release of a bankrupt whose description in his petition is incorrect. *Hall, in re*, 7 L. T. N. S. 725, Goulburn, Com. *See* 8 L. T. N. S. 854. An objection to the description given by a bankrupt of himself, if insufficient, cannot be taken upon an application for an order of discharge. *Crabtree ex parte, in re Taylor*, 10 Jur. N. S. 529; 33 L. J. Bank. 33; 10 L. T. (N. S.) 361, C. Where it appears that the debts of a bankrupt are above 300*l.*, but the stamp affixed is only for a petition under that amount, the petition will be dismissed. *Harrison in re*, 8 L. T. N. S. 854. S. P.

V. Proceedings before and at Adjudication.

(A) *In General.*[1]

(B) *In formâ pauperis.*[2]

(C) *Second Adjudication without Certificate.*[3]

(D) *Consolidating Adjudications.*[4]

(E) *Annulling Adjudication.*[5]

(F) *Relation Back.*[6]

VI. Adjudication and its Effects.

(A) *Goods in the Possession, Order, and Disposition of the Bankrupt.*[7]

Cracknell in re, 12 W. R. 138. Where a petition has been filed with a wrong stamp, and the error discovered before anything has been done, the court will dismiss it, and give leave to file another. *Flinn in re*, 3 L. T. N. S. 205. As to serving on a non-trader, see *re Calthorpe*, 3 L. R. Ch. 252.

[1] An infant who is in custody for debt may petition for an adjudication against himself. *Ex parte Hands, in re Hands*, 15 W. R. 1089. A non-trader is, equally with a trader, entitled to time within which to show cause against an adjudication of bankruptcy which has been made against him. *Ex parte Hepburn*, 36 L. J. Bank. 48; 17 L. T. N. S. 275, L. J. There is no analogy between an attempt to upset a registered trust-deed by petition for adjudication of bankruptcy and an attempt to cancel the the registration of such deed. *Ex parte Williams*, 15 L. T. N. S. 451. It is no objection to an adjudication in a district court of bankruptcy against a trader, that the acts of trading were out of the district. *Cleland in re*, 36 L. J. Bank. 33; 2 L. R. Ch. 466; 16 L. T. N. S. 403, L. J.

[2] Where a person appears to have means, he is not entitled to apply to the court *in formâ pauperis*. *McBride in re*, 9 L. T. N. S. 400, Holroyd, Com. If a prisoner files his petition for adjudication against himself as a pauper, and it is afterwards discovered that at the time of filing his petition he was possessed of property in the hands of a creditor to the value of 30*l.* or 40*l.* above all charges upon it, the petition will be dismissed. *Peacock ex parte, in re Vogt*, 8 L. T. N. S. 60. Nor can a pauper in receipt of a pension petition *in formâ pauperis*. *West, ex parte*, 7 L. T. N. S. 569.

[3] An adjudication against a person who is an uncertificated bankrupt under a former bankruptcy is not void, and the assignees under the second may sue. *Morgan v. Knight*, 15 C. B. 669, N. S.; 33 L. J. C. P. 168; 9 L. T. 803.

[4] An application for the consolidation of proceedings under two adjudications, should be made to the chief commisioners, under the 88th section of the 24 & 25 Vic. c. 134. *Churchill ex parte, in re Griffiths, and Thorneycroft in re*, 9 Jur. N. S. 33; 32 L. J. Bank. 18, C.

[5] The court has no power to annul an adjudication in bankruptcy before advertisement. *Ludbrooke ex parte, in re Levy*, 9 Jur. N. S. 950; 8 L. T. (N. S.) 781, C. Where the legal requisites to support an adjudication of bankruptcy exist, the court will not annul it, except on very strong equitable grounds. *Ex parte Upfill, in re Upfill*, 1 L. R. Ch. 439. The fact that the examination of a bankrupt was imperfect and inaccurate affords no reason why an order duly made to annul the adjudication, to which order the assignees and creditors assented in ignorance of such imperfection and inaccuracy, should be discharged, and the proceedings revived. *Adams in re*, 10 L. T. (N. S.) 212. *Elsey v. Adams*, 10 Jur. N. S. 459; 10 L. T. (N. S.) 492, L. J. A. having accepted a bill of exchange drawn upon him by B., in order to induce B. to consent to the annulling of the bankruptcy of a friend of A., and having been compelled to pay the bill to a *bonâ fide* holder:—*Held*, that A. could not recover back the amount so paid from B. *Watson v. Bennett*, 12 W. R. 1008, Exch. It may be annulled where three-fourths of the creditors assent to an arrangement without the requirements of ss. 110-185 being observed. 3 L. R. Ch. 144.

[6] In trover by the official assignee against the defendant:—*Held*, under 24 & 25 Vic. c. 134, s. 103, the adjudication related back to the date of the commitment of bankrupt to prison, and therefore goods, which were then in his order and disposition by the consent of the defendant, pass to the official assignee, and the transaction is not protected by 12 & 13 Vic. c. 106, s. 133. *Bramwell v. Eglington*, 7 B. & S. 537; 1 L. R. Q. B. 494; 35 L. J. Q. B. 163.

[7] A secret partnership is not within the reputed ownership clause, as there is a joint ownership, and no true owner as distinct from an apparent owner. *Reynolds v. Bowley*, 36 L. J. Ex. Ch. Q. B. 547; 2 L. R. Q. B. 474.

If goods assigned by a bill of sale are allowed to remain in the possession of the person who gives it, and the latter, while still in the possession of the goods, becomes bankrupt, the mere fact that the bill of sale was, before the bankruptcy happened, duly registered, will not prevent the goods from passing to the creditors under the bankruptcy, by 12 & 13 Vict. c. 106, s. 125, as goods in the possession,

(B) *As to Distress for Rent.*[1]

(C) *As to Fraudulent Preference.*[2]

order, or disposition of the bankrupt at the time he became bankrupt, with the consent of the true owner. *Badger v. Shaw*, 2 El. & El. 472. The 17 & 18 Vic. c. 36, does not in any degree narrow the application of the doctrine of reputed ownership in bankruptcy. *Ib.* See *Spackman v. Miller*, 12 C. B. (N. S.) 659; 9 Jur. N. S. 50. But goods consigned for sale on commission are in the possession of the consignee as factor, and do not pass to his assignees on his bankruptcy. *Bjorneborg, Tandsticks Lucifer Match Factory Association*, 9 L. T. (N. S.) 460. Where registered mortgagees of three fishing-boats deposited the mortgage-deeds with their bankers as security for a debt, and afterwards became bankrupt:—*Held*, that the statutory form of assignment being by indorsement, the mortgages could not be dealt with by the bankrupts, and therefore were not in their order and disposition. *Lacon v. Liffen*, 4 Giff. 75; 9 Jur. (N. S.) 13. See *Swanston v. Clay*, 32 L. J. C. 503; 32 L. J. C. 315. A. contracted with W. to build a barge by the 5th June, and hired a yard for the purpose of performing the work. In June the work was not completed; but W. having made certain advances, it was agreed, in writing, that the barge should be a security in the hands of W. for such advances. In July A. became bankrupt. The advances made by W. exceeded the value of the work done;—*Held*, that W. was entitled to a lien on the barge, subject to the right of the assignees to complete the contract. *Watts ex parte, in re Attwater*, 9 Jur. N. S. 238; 32 L. J. Bank. 35; 7 L. T. (N. S.) 585, C. Where a custom exists for the buyer to leave goods bought in the hands of the seller, and is so notorious as to be practically known to all persons dealing with the seller in his business, goods so left in the hands of the seller for a time not longer than is clearly within the custom, do not on the bankruptcy of the seller pass to his assignees. *Priestly v. Pratt*, 2 L. R. Exch. 101; 36 L. J. Exch. 89; 16 L. T. (N. S.) 64. The law of reputed ownership is not applicable to fixtures which may be in the possession of a trader at the time of his bankruptcy. *Head in re, ex parte Cobbold*, 12 W. R. 215. A grantee of an annuity on the bankruptcy of the grantor stating that he had no doubt that his partner in business, who managed the transaction, had given the executors of the estate charged notice of the annuity, is not sufficient to take the share of the grantor out of his order and disposition. *Foster v. Bonner*, 8 L. T. (N. S.) 530. See *Hughes in re*, 10 L. T. (N. S.) 813. The depositee of a policy to secure a debt, who does not give notice to the Insurance Office, has no defence to an action for the policy by the assignee in bankruptcy of the depositor, if the debt recoverable under the policy was intended to be the security. In *Gibson v. Overbury*, 7 M. & W. 555, the lien of the depositee was on the policy alone, not on the money assured. *Green v. Ingham*, 2 L. R. C. P. 525; 36 L. J. 238; 14 L. T 453. A casual conversation between a policy-holder and the secretary of the insurance office, in which the former mentioned that he had deposited his policy with defendant as a security, is not sufficient notice to the office. *Edwards v. Martin*, 1 L. R. Eq. 121. The lodgment of the script certificate of shares in a company will not take them out of the order and disposition of the owner, whilst they still remain registered in his name in the books of the company, and in case of his bankruptcy they will pass to his assignees. *In re Grehan*, 16 L. T. (N. S.) 39, Agra Bank, *in re* 3 L. R. Ch. 555. Debts in respect of goods supplied by the assignee of a contract are in the order and disposition of the assignor. *Cook v. Hemming*, 37 L. J. C. P. 179; 3 L. R. C. P. 334. Under the 125th section the order of the commissioner must be expressly for sale. Id. The 103, s. 24 & 25 Vic. c. 134; as to order and disposition applies to petitioners *in formâ pauperis*. *Eglinton v. Bramwell*, 35 L. J. Q. B. 163.

[1] By 12 & 13 Vict. c. 106, s. 129, no distress for rent made after an act of bankruptcy upon the goods of any bankrupt, whether before or after the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, shall be available for more than one year's rent accrued prior to the date of the fiat:—*Held*, that in order to bring a case within this enactment, the act of bankruptcy must be one to which the title of the assignees could relate. *Paull v. Best*, 3 B. & S. 537; 32 L. J. Q. B. 96; 7 L. T. (N. S.) 738. Where a bankruptcy takes place between two periods fixed for the payment of rent, the landlord is not entitled to be paid in full for the quarter's rent accruing due after the bankruptcy, notwithstanding that the assignees take and keep possession of the premises until the quarter day. *De Buisson ex parte, in re Caston*, 10 L. T. (N. S.) 792.

[2] A bank, being endorsee of bills on which a trader had forged acceptances, the trader, in contemplation of bankruptcy, took up the bills without pressure on him being made by the bank. The trader became bankrupt:—*Held*, that the payment to the bank was a fraudulent preference. *Hibernian Bank ex parte*, 14 Ir. Chanc. Rep. 113. A covenant to keep up a policy of insurance:—*Held*, void, the consideration being that covenantee would forbear to sue A. on a bill of exchange accepted by A., with the privity of the covenanter, to secure the covenantee a fraudulent preference over the other creditors of the covenantor.

(D) *As to Executions, Payments, &c.*[1]

VII. As to Choice of Creditor's Assignees; and Removal of.

(A) *When and how Chosen.*[2]

(B) *Removal of.*[3]

Geere v. Mare, 9 Jur. N. S. 827; 12 W. R. 17. See *Nunes v. Carter*, 1 L. R. P. C. 342; 36 L. J. 12, P. C. It is a question for the jury whether a preference is fraudulent or not. 3 L. J. N. 227.

[1] Where goods of a debtor are seized by the sheriff under an execution, but before sale, an interpleader order is made, which, in the first instance, directed the claimant to bring a sum of money into court or give security, in default thereof sheriff to proceed to sale and bring proceeds into court. This order was allowed to drop, and before the sale by the sheriff the debtor was adjudicated bankrupt on his own petition:—*Held*, the case was within section 184 of 12 & 13 Vic. c. 106, and the assignee in bankruptcy, not the execution creditor, was entitled to the proceeds of sale. *O'Brien v. Brodie*, 1 L. R., Ex. 302; 35 L. J. 188. When a party has notice of a prior act of Bankruptcy before he purchases under an execution, the transaction is not protected under s. 133, and the assignees are entitled to recover the goods. *Edwards v. Gabriel*, 31 L. J. Ex. 113; 7 H. & W. 524. An adjudication of bankruptcy on a petition *in formâ pauperis* of a debtor in custody, has relation back to the time of the bankrupt's commitment or detainer, under the 24 & 25 Vic. c. 134, s. 103. *Bramwell v. Eglinton*, 10 Jur. N. S. 583; 33 L. J. Q. B. 130; 10 L. T. (N. S.) 295; 35 L. J. 163; 1 L. R. 491. As sect. 103 makes the adjudication relate back to the commitment or detention absolutely, and not merely as an act of bankruptcy, sect. 133 of the 12 & 13 Vict. c. 106, affords no protection in such a case. *Ib.* A purchaser, by a bill of sale, in due form, from one who afterwards becomes a bankrupt, has a good legal title, though unregistered, against the bankrupt and all who claim under him, by 17 & 18 Vic. c. 104. *Stapleton v. Haymen*, 2 H. & C. 918; 10 Jur. N. S. 497; 33 L. J. Exch. 170.

When an execution is levied by seizure of the goods of the debtor, and afterwards an interpleader order is made by which the execution is delayed, and before its completion by sale of the goods the debtor is adjudged a bankrupt, the execution creditor is entitled to no more than a rateable part of his debt. *O'Brien v. Brodie*, 4 H. & C. 544; 35 L. J. Exch. 188; 1 L. R. Exch. 302. An execution creditor having seized the goods of his debtor under a *fi. fa.*, the latter subsequently to the seizure, but before sale committed an act of bankruptcy, of which the creditor had notice:—*Held*, that the words "notice of any prior act of bankruptcy," in sect. 133 of 12 & 13 Vic. c. 106, have reference only to acts of bankruptcy committed prior to the seizure, and not to acts of bankruptcy subsequent thereto; and that, consequently, the creditor was entitled to the benefit of his execution. *Edwards v. Scarsbrook*, 3 B. & S. 280; 9 Jur. N. S. 537; 32 L. J. Q. B. 45. Affirmed on appeal, 9 Jur. N. S. 201, Exch. Cham. An execution against the goods of a debtor who afterwards becomes bankrupt must, in order to be available against his assignees, be levied by seizure and sale of the goods before the date of the fiat or filing the petition for adjudication under the 12 & 13 Vict. c. 106, sects. 133 & 184. *Young v. Roebuck*, 2 H. & C. 297; 32 L. J. Exch. 260; 8 L. T. (N. S.) 453, Exch. The sheriff having seized under a *fi. fa.*, notice was given of a prior act of bankruptcy by the debtor, and a petition was filed under which he was adjudicated bankrupt, the goods remaining unsold, and the messenger took possession of them:—*Held*, that the sheriff was not entitled to a rule calling upon the assignees to pay him the expenses of preparing for a sale of the goods. *Searle v. Blaise*, 14 C. B. (N. S.) 856. *Boyle v. Blackstock*, 8 L. T. (N. S.) 641. Notice of an act of bankruptcy by an execution debtor to an attorney who was employed by the attorney of the execution creditor as their agent to complete the execution:—*Held*, notice to the execution creditor, and that a subsequent sale was invalid. *Brewin v. Briscoe*, 2 Ell. & Ell. 116.

[2] It is not necessary, though it is usual, that a creditor's assignee should himself be a creditor of the bankrupt. *In re Barry and Rumley*, Ir. Rep. 1 Eq. 48.

If no such assignee be chosen at the first meeting of the creditors, and the meeting is not adjourned for that purpose, no creditor's assignee can be chosen at any subsequent meeting. *Cannot in re*, 8 L. T. (N. S.) 291.

[3] Where assignees are chosen at the instance of a bankrupt's solicitor, who has the sole control of the estate, and the bankrupt carries on business as before the bankruptcy, and the assignees neglect their duty, the court will remove them, and will order the costs of the creditors making the application to be paid out of the estate. *Beesley in re*, 11 W. R. 878.

The omission of a creditor's assignee to render accounts within the time prescribed

(C) *Who may Vote at the Election.*[1]

VIII. Rights and Duties of Assignees in General.

(A) *All Real and Personal Estate to vest in Assignees. Who may sell Book Debts.*[2]

(B) *Leaseholds and Freeholds subject to Rents; Election to take Lease.*[3]

(C) *Of a Bankrupt's Partner.*[4]

(D) *Claims due to and Rights of Action by and against Assignees.*[5]

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by the 134th section of the 24 & 25 Vic. c. 134, and to attend two meetings appointed for the examination of the bankrupt are sufficient grounds for his removal. *Rawlings, ex parte, in re Rawlings,* 9 Jur. N. S. 1183; 12 W. R. 3; 9 L. T. (N. S.) 275:—*Held*, also, that he was properly ordered to pay the costs of one of the adjournments occasioned by his absence. *Ib.*

[1] All the creditors who have proved their debts have a right to vote in the choice of creditor's assignees, although their debts do not amount to 10*l*. *Ex parte Moss, in re Cooper,* 17 L. T. (N. S.) 279; 3 L. R. Ch. 29; 57 L. J. B. 61.

[2] Fixtures affixed to a freehold, no matter by what fastenings, belong to the lessor. Those which merely rest on the soil, and are not fixed and fastened to the freehold, pass to the assignees, upon the bankruptcy of the tenant or occupier. *Newbury ex parte, in re Newbury,* 10 L. T. (N. S.) 661. An option for a tenant to have an extended term, passes to his assignees in bankruptcy, either as personal estate under section 141, or an interest in land under section 142, and may be sold by the assignees. *Buckland v. Papillon,* 1 L. R. 2 Ch. Ap. 67; 36 L. J. 81. Book-debts in 24 & 25 Vic. c. 134, s. 137, are such debts accruing in the ordinary course of a man's trade as are usually entered in the trade books. *Shipley v. Marshall,* 14 C. B. (N. S.) 566; 9 Jur. N. S. 1060; 32 L. J. C. P. 258; 8 L. T. (N. S.) 430. *McEvoy v. Bent,* 11 W. R. 314, Exch. The books of a solicitor who has become bankrupt cannot therefore be offered for sale by the assignees. *Roberts ex parte,* in *re Holden,* 9 L. T. (N. S.) 469, C.; 10 Jur. N. S. 28; 23 L. J. Bank. 8. An order for sale of such part of a bankrupt's property as is likely to depreciate in value may properly be made before the choice of a trade assignee; but where no reason exists for an immediate sale, the creditor's assignee is the proper person to have the management; all the estate of the bankrupt vests in him upon his appointment. *Stowers, in re,* 12 W. R. 534. The question whether in a colonial insolvency the personal estate, situate in England, vests in the assignee, is altogether one of domicil. If the domicil be colonial, *semble*, the personalty in England vests in the assignee, *secus* if the domicil be English. *In re Blithman,* 2 L. R. Eq. 23; 35 L. J. 255. On the insolvency of a firm in India, both the separate estate and the joint estate of the partners pass to the assignees under the Indian Insolvent Debtors Act, 11 & 12 Vic. c. 21, s. 5. *Brown v. Carbery,* 16 C. B. N. S. 2: 9 L. T. (N. S.) 768.

[3] The owner of a long term in land agreed to let it for three years, and also, when called upon by the tenant, to grant him a lease for three years, seven years, or the whole term. The tenant continued in the occupation beyond the three years, and became bankrupt. The assignee sold the bankrupt's estate and interest in the leasehold to a purchaser:—*Held*, first, that the option of the tenant to take a lease was not gone at the end of the three years. *Buckland v. Papillon,* 2 L. R. Ch. 67; 36 L. J. Chanc. 81, C:—*Held*, secondly, that it passed to the assignee in bankruptcy. *Ib.*:—*Held*, thirdly, that the option had passed to the purchaser. *Ib.* Although sec. 145, 12 & 13 Vic. c. 106, applies to a tenancy by parol, and therefore the assignees in bankruptcy declining to accept the lease, the bankrupt will have complied with the section by giving up the subject of demise to the lessor (*Slack v. Sharpe,* 8 Ad. & Ell. 366), yet where the demise is by deed, he must, to comply with the section, deliver up the lease, as well as execute a surrender to the landlord, or establish the impossibility of his giving up the lease. *Coles v. Evanson,* C. P. 13 W. R. 1017.

[4] The assignee of a bankrupt partner is a tenant in common of the partnership goods with the solvent partner, and therefore cannot maintain an action for their conversion against an auctioneer for selling such goods by direction of the solvent partner. *Lewis v. White,* 8 L. T. (N. S.) 320, Exch.

[5] Although assignees may be entitled to all pecuniary demands to which a bankrupt is entitled, it is questionable whether a claim can be divided between bankrupt and assignee where part is personal and residue pecuniary. *Hodgson v. Sydney,* 39 L. J. Ex. 182; 4 H. & C. 692; 1 L. R. Ex. 313. *Semble* per *Bramwell* B., that if there had been special damage as well as pecuniary, the bankrupt could not recover the former. A right of action against an attorney for negligence in conducting an action, by having issued execution for the whole sum for which judgment has been recovered, although part of it has been paid, of which the attorney has notice, passes to the assig-

IX. Proof of Debts.

(A) *In general and of contingent liabilities.*[1]

(B) *Of Costs.*[2]

nees on the bankruptcy of the plaintiff. *Crawford v. Cinnamon*, 15 W. R. 996, Ir. Exch. *In re Daines*, 16 L. T. N. S. 127. When a plaintiff has become bankrupt, after verdict in trover against the defendant, subject to reference, the defendant has a right to require the assignees to adopt the proceedings before he takes another step. And if he has once clearly raised this objection, he will not lose the benefit of it merely by subsequent silence respecting it, and the court will set aside, as irregular, a judgment obtained at the instance of attorneys not acting for the assignees. *Toms v. Wilson*, 17 L. T. (N. S.) 266.

O. and S., bankers, who expected a run on their house, obtained a loan from F. on the express understanding that they were not to use it unless it would enable them to meet the run. They kept the money in a box, and finding that they could not stop the run, and F., who saw the case was hopeless, pressing them to return the money, they did so. O. and S. became bankrupt. *Held*, that, under the circumstances, O. and S. had only the legal, not the equitable ownership of the money, and that it would not pass to their assignees. *Edwards v. Glyn*, 2 Ell. & Ell. 29.

A defendant having been arrested in an action for a debt, paid the amount to the sheriff, with 10*l.* costs, and the sheriff paid the same into court. The defendant became bankrupt before putting in special bail, or paying in an additional sum of 10*l.*, pursuant to 7 & 8 Geo. 4, c. 71, s. 2:—*Held*, that his assignees were not entitled to the money and costs paid into court. *Cooke v. Bell*, 11 W. R. 732, Exch. In an action by assignees of a bankrupt to recover the price of machinery supplied by the bankrupt, the court allowed the defendant to plead an equitable plea of set-off for unliquidated damages arising out of the same contract. *Makeham v. Crow*, 15 C. B. (N. S.) 847. And the proportion of rent due from a bankrupt on the day of adjudication, or on the registration of a creditor's deed, forms a good subject of set off to an action against the landlord of the bankrupt by his assignee or the trustee of a creditor's deed. *Stanger v. Miller*, 1 L. R. Ex. 58. The trade assignee may render himself personally liable to the messenger for his costs and charges, subsequent to the choice of assignee by an implied contract. Letters from the solicitor of the assignee to the messenger, giving directions touching the management, &c., of the property in his possession:—*Held* to be such an interference as rendered the assignee personally liable. *Stubbs v. Horn*, 1 L. R. C. P. 56.

[1] Where a custom is shown that parties engaged upon a daily newspaper are, upon dismissal or the stoppage of the paper, entitled to a month's salary in lieu of notice, they may prove accordingly in addition to arrears of salary then actually due. *Ex parte Allpas, ex parte Chipchase, in re Hutton*, 17 L. T. N. S. 179. A merchant who swears that he is the sole London agent of the creditor seeking to prove, and is perfectly conversant with all the circumstances attending the contracting of the debt with certainty and precision, the transaction having passed through his hands, is an agent within the meaning of section 146 of the 24 & 25 Vic. c. 134, and, being duly authorised, may prove for his principal. *Barrington ex parte, in re Dobson*, 10 L. T. N. S. 103. A wife cannot prove against her husband's estate for arrears of alimony payable to her under an order of the court for divorce and matrimonial causes. *Rice ex parte, in re Rice*, 10 L. T. (N. S.) 103, Goulburn, Com.

Where the value of annuity is incapable of calculation it is not provable nor is the bankrupt discharged. *Madge v. Rowan*, 3 L. J. (N. S.) 8. A covenant to pay premiums on a policy of life insurance is not "a liability to pay money upon a contingency," within the meaning of sec. 78, 12 & 13 Vic. c. 106; and bankruptcy of the covenantor does not bar the liability for subsequent premiums. The liability is an absolute one terminable on a contingency. This section does not apply to a case where there may be a succession of contingent liabilities, but only where there is one such liability. *See* now 24 & 25 Vic. c. 134, s. 154. *Metcalfe v. Hansom*, 1 L. R. H. L. 242; 35 L. J. Q. B. 225. A defendant, having transferred into the plaintiff's name shares in a mine conducted on the cost-book principle as security for a debt, covenanted with him to indemnify him from all calls which might be made upon such shares, and all charges, liabilities, and costs, that might attach to the said shares. The defendant became bankrupt, and the plaintiff was afterwards compel to pay in respect of such shares certain debts of the mine which accrued before the bankruptcy:—*Held*, in an action on this covenant for not indemnifying the plaintiff against such payment, that the defendant's liability was not to pay money upon a contingency within 12 & 13 Vic. c. 106, s. 178, nor did the plaintiff stand in the position of surety for the defendant within the meaning of s. 173; and that therefore the bankruptcy of the defendant was no bar to the action. *Betteley v. Stainsby*, 36 L. J. C. P. 293; 2 L. R. C. P. 568; 16 L. T. (N. S.) 701; 15 W. R. 1047. *Ex parte Halliday, in re Hall*, 11 Jur. N. S. 817.

[2] A defendant's costs, where, although the verdict be given before, the judgment is not

(C) *Damages.*[1]

(D) *Interest.*[2]

(E) *Mortgage.*[3]

(F) *Parochial Rates.*[4]

(G) *Partners, and Joint and several Debts.*[5]

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obtained until after the plaintiff has become bankrupt, are not proveable under such bankruptcy. *Oxlade v. North Eastern Railway Company*, 33 L. J. C. P. 171. In proving for costs ordered to be paid in a divorce suit, the order for payment must be set out in the proof so exhibited. *Collard ex parte, in re Mallett*, 10 L. T. N. S. 792. A creditor's deed executed on the 3rd Dec. 1862, by the debtor, in pursuance of a resolution at a meeting of creditors on the 25th November, assigning all his property to trustees (plaintiff's) for such persons as would have been entitled to rank as creditors in bankruptcy, if the debtor had been adjudged bankrupt upon a petition filed on the said 25th November, 1862. On the same 3rd December, but subsequent to the execution of the deed, a creditor signed judgment against the debtor:—*Held*, that the judgment creditor could prove for his costs under the deed, and that the deed was not fraudulent under 13 Elizabeth. *Evans v. Jones*, Ex. 34 L. J. (N. S.) 25. Where judgment in an action is signed after defendant's bankruptcy, plaintiff's costs are not proveable, and the defendants may be arrested on the judgment for such costs. *Maughan v. Vinesberg*, 37 L. J. C. P. 210.

[1] An amount due for damages for a breach of covenant to replace railway stock (the stock being held in such circumstances that it might be presumed to be marketable), may be proved as a "demand," within sect. 165 of 12 & 13 Vict. c. 106. *Betteley v. Stainsby*, 9 Jur. N. S. 440—C. P.

The 153rd section of the 24 & 25 Vic. c. 134, allowing proof to be made in respect of unliquidated damages, is limited to cases where there is a cause of action actually accrued, or a demand enforceable against the bankrupt, at the time of adjudication. *Mendel, ex parte, in re Moor*, 1 De G. J. & Sm. 330; 10 Jur. N. S. 189; 33 L. J. Bank. 14; 9 L. T. (N. S.) 793. Damages under covenants for title, though unascertained at the date of the vendor's bankruptcy, are proveable, the liability having arisen immediately on the execution of the conveyance containing the covenants. The costs of defending the title were included in the damages, though not the costs of an unsuccessful appeal. *Ex parte Elmes, in re Hughes*, 33 L. J. N. S. (B.) 23.

[2] Where proof is in respect of a debt secured by a bond, the rule in bankruptcy is, that a speciality creditor cannot have interest beyond the penalty contained in his security, but up to the penalty of the bond he will be entitled to interest at the rate secured by the bond. *Day, ex parte, in re Sharke*, 9 L T. N. S. 350. For interest beyond the penalty he may come in with creditors whose debts do not carry interest. *Ib.*

[3] Mortgage in fee by husband and wife of property of which they were seized in right of the wife. Bankruptcy of husband. Bill by wife to have the estate exonerated out of the bankrupt's estate other than his interest in her estate, which she prayed might be settled, and if necessary, that she might redeem. On assignees' disclaimer, redemption decree; if not redeemed, bill dismissed. The disclaimer is only operative in case the wife redeems, and the right of proof by the mortgagee is governed by the alternative form of the decree. 9 Jur. N. S. 701.

An equitable mortgagee seeking to have his securities realised upon the bankruptcy of the mortgagor, is not entitled to any interest subsequent to the date of the fiat. *Lubbock, ex parte in re Flood*, 9 Jur. N. S. 854; 32 L. J. Bank. 58.

[4] One year's parochial rates due at the date of bankruptcy may be paid in full. *Saberton, in re*, 9 L. T. (N. S.) 267.

[5] One of several makers of a joint and several promissory note in favour of a third party, having paid the debt secured by the note, may not prove upon the note against some of the co-makers under their bankruptcy. His remedy is by way of contribution from each of his co-contractors *pro portione*. *Schenk, ex parte in re Viner*, 10 L. T. (N. S.) 44.

A partner cannot prove a debt against the estate of his co-partner, as long as there are joint debts of the partnership unsatisfied. *Collinge, ex parte, in re Holdsworth*, 33 L. J. Bank. 9; 9 Jur. N. S. 1232; 9 L. T. (N. S.) 309. *Ex parte Bass*, 36 L. J. B. C. 39. A partnership debt may be proved against the separate estate of a bankrupt partner, so as to come in competition with the separate creditors. *Clark, ex parte, in re Sabberton*, 10 L. T. (N. S.) 165. Joint creditors are entitled to the surplus estate of individual partners after payment of their separate debts. *Begbie, in re, ex parte Grant*, 12 W. R. 690; 10 L. T. N. S. 276. Joint creditors are entitled to priority of payment out of the surplus of the separate estate, which surplus is divisible amongst that class of creditors before the bankrupt is entitled to his allowance. *Ib.* There is no rule that the separate creditors of a bankrupt must be paid in full, before the partnership can be admitted to prove. *Gill, ex parte, in re Al-*

(H) *Wages.*[1]

(I) *Expunging or Reducing Proof and Costs of Proving by Court.*[2]

XI. Of the Bankrupt, his Examination, Order for Discharge, Rights and Liabilities.[3]

len, 9 Jur. N. S. 1303; 9 L. T. (N. S.) 308—C. Where one of two partners died, and the other soon afterwards became bankrupt, the joint estate being administered in bankruptcy, and the separate estate of the solvent partner in chancery:—*Held*, that the joint creditors who were part paid in bankruptcy were not entitled to prove against the separate estate of the solvent partner *pari passu* with the creditors of the solvent partner. *Lodge v. Pritchard*, 4 Giff. 295. Where there are separate adjudications against the members of a firm, and one of such members had not paid up his share of the capital, that does not form a debt that can be proved by the assignee of one partner against the estate of the other without taking the partnership accounts. *Ex parte Maude. In re Braginton*, 2 L. R. Ch. Ap. 550.

[1] Where clerks or servants claim to be paid in full, the court will include an allowance for notice according to the custom of the trade or service. *Jennings, ex parte, in re Stiff*, 7 L. T. N. S. 631.

[2] The release of a debt of a bankrupt after the debt had been proved, and which release merely expressed that he should be discharged from all demands of the creditors, will not annul the creditor's right to the benefit of his proof. *Cazeneau, ex parte, in re Cazeneau*, 9 Jur. N. S. 655; 8 L. T. N. S. 11; *see* 9 ed. 995. An application to reduce the proof after seven years has elapsed too late. *Sanderson, ex parte, in re Alexander*, 8 De G. Mac. & G. 849.

The general rule is, that costs of proof are to be paid by the creditor seeking to establish the claim. *Day, ex parte, in re Sparke*, 9 L. T. N. S. 350.

[3] Where by resolutions of the creditors the proceedings in bankruptcy are suspended against the debtor, they agreeing to a composition, the debtor is entitled to a discharge without going through the form of a final examination. *Ex parte Tilston, in re Tilston*, L. J. 2 L. R. 2 ch. 199.

It is the duty of a commissioner when applied to by a bankrupt for his discharge under the circumstances mentioned in sect. 110, to be judicially satisfied, before granting it, that the bankrupt has made a full discovery of his estate. *Jones ex parte, in re Wilson*. 33 L. J. Bank., 11—C.

A commissioner has no power, under sect. 162, to adjourn the last examination of a bankrupt *sine die*, unless for such an offence as under sect. 159 of the 24 & 25 Vic. c. 134, would disentitle him to his order of discharge. *Grummitt, ex parte, in re Grummitt*, 10 Jur. N. S. 738; 33 L. J. Bank. 43; 10 L. T. N. S. 680—C. Where the court believe that the statements of account filed by a bankrupt are false and insufficient, it will decline to pass his last examination, but will adjourn him *sine die* with protection. *Lanzbery, in re Hughes*, 3 L. R., Ch. 147. *In re Lee*, 3 L. R., Ch. 150.

The court will not permit a small section of the creditors to examine a party who is a stranger to the proceedings in order to make out a case against him for proceedings elsewhere. Nor will it compel the creditors' assignees to allow their names to be used for the purposes of instituting a suit in equity against a third party. *Madigan, ex parte, in re Stiff*, 10 L. T. N. S. 914. Sect. 166 of the 24 & 25 Vict. c. 134, as to securities to prevent opposition, has not a retrospective operation. *Reed v. Wiggins*, 13 C. B. (N. S.) 220; 32 L. J. C. P. 131. To ground an opposition to a bankrupt's discharge, the charge should not be a case of suspicion, but one clearly established by the evidence. *Abbott, ex parte, in re Abbott*, 8 L. T. N. S. 813. *Delson, ex parte*, ed. 487.

When an order of discharge has been *refused*, the application may be reviewed, but not when granted or suspended. *In re Atherton*, 37 L. J. Bank. 146; 3 L. R. Ch. 142. An action founded on tort is not an action to recover any debt or money due within the meaning of sect. 159 of the 24 & 25 Vic. c. 134, and a vexatious defence to such an action is no ground for refusing an order of discharge. *Crabtree, ex parte, in re Taylor*, 10 Jur. N. S. 529; 33 L. J. Bank. 33; 10 L. T. (N. S.) 361—C. *Griffiths, ex parte, in re Griffiths*, 10 Jur. N. S. 785; 33 L. J. Bank. 44; 10 L. T. N. S. 705—C. Where a bankrupt's discharge was suspended for twelve months, with protection for three months, and he neglected to apply for further protection, and after three months he was arrested on a *ca. sa.*:—*Held*, that the bankruptcy court had no power under this section to order the bankrupt's release. *Re Kimberley*, 13 W. R. 565.

A trader who has no capital of his own cannot be allowed to speculate in consignments abroad of goods obtained upon credit, where the chance of gain is entirely his own, and where the adventure, if unsuccessful, must result in a total loss to the creditors supplying the goods. *Fryer ex parte, in re Fryer*, 10 L. T. (N. S.) 197. But a trader carrying on his business by means of money procured by the discount of accommodation bills, not purporting to be trade acceptances, does not come within the definition, of "carrying on trade by means of fictitious capital." *Ex parte Harrison, in re Harrison*, L. J. 2 L. R. 2 Ch. Ap. 195.

The mere fact that a man who has a fixed income has exceeded it, and so incurred debts, is not sufficient to show that he could not have had at the time when any of his debts were contracted any reasonable or pro-

bable ground of expectation of being able to pay the same. *Ex parte Brunditt, in re Caldwell*, 10 W. R. 66; 3 L. R. Ch. 26—Cairns L. J. See *re Engleheart*, 12 W. R. 387. To justify the court in subjecting a bankrupt to the penal consequences of the Bankruptcy Act of 1861, for having so contracted debts, there must be specific evidence of the time when, and the circumstances under which, the debts were contracted. *Ib.* See *re Hartman*, 12 L. T. 649. *Barker ex parte, in re Barker*, 33 L. J. Bank. 13; 12 W. R. 321; 9 L. T. N. S. 672—C. Where a bankrupt had entered into contracts from which he was to derive pecuniary advantages, on the formation of a company of which he was the promoter, but which company became defunct, by reason of the necessary capital not having been subscribed:—*Held*, that he had not been guilty of embarking in a rash and hazardous speculation, within the meaning of sect. 159 of 24 & 25 Vic. c. 134. *Dowman ex parte, in re Dowman*, 9 Jur. N. S. 811; 32 L. J. Bank. 49; 8 L. T. N. S. 225—C. Sect. 159 of the 24 and 25 Vic. c. 134, is not retrospective, and an offence created by that clause must, in order to justify the refusal of suspension of the order of discharge, have been committed subsequently to the passing of the act. *White ex parte, in re White*, 10 Jur. N. S. 189; 33 L. J. Bank. 22; 9 L. T. (N. S.) 702—C.

The order of discharge granted to a bankrupt takes effect from the time the order is pronounced by the commissioner, and not from the expiration of the time allowed for appealing when the order is drawn up. Unless the order is annulled, property acquired by a bankrupt between the two periods passes to the bankrupt and not to his assignees. *Laforest, in re ex parte Bell*, 9 Jur. N. S. 856; 32 L. J. Bank. 50; 11 W. R. 738; 8 L. T. (N. S.) 481—C. See id. 801. The assignees or creditors of a bankrupt who have obtained a [B a] certificate under 12 & 13 Vic. c. 106, s. 257, may lawfully, notwithstanding the repeal of this section by 24 & 25 Vic. c. 134. s. 230, arrest the bankrupt under the powers of this certificate, as the repealed section both imposes a penalty upon the bankrupt and confers a right upon the assignees or creditors, and the saving clause of the repealing section excepts any right that has arisen or may arise, or any penalty incurred or that may be incurred, under the act repealed. *In re Robinson, ex parte Graham*, 36 L. J. Q. B. 203; 15 W. R. 900; 16 L. T. (N. S.) 380; S. C. nom. *Graham v. Robinson*, 2 L. R. Q. B. 387.

A bankrupt committed to gaol, by virtue of 43 Eliz. c. 2, s. 7, and 4 & 5 Will. 4, c. 76, s. 78, for non-payment of penalties, may lawfully, notwithstanding his protection in bankruptcy, be detained in custody for the full term of his imprisonment. *Bancroft v. Mitchell*, 36 L. J. Q. B. 257; 2 L. R. Q. B. 549; 16 L. T. N. S. 558. *Reg. v. Ferrall*, 20 L. J. M. C 39 2 Den. C. C. 51.

A person in prison as an outlaw upon a writ of *capias utlagatum* is not "in prison or custody for debt" within the meaning of the 112th section of the Bankrupt Law Consolidation Act. *Ex parte Stoffel, in re Stoffel*, 37 L. J. 136. The protection of the certificate of registration, under the 198th section of the Bankruptcy Act 1861, does not extend to process in respect of debts accruing due after the date of registration. *Dignam v. Bailey*, Q. B. The word creditor in this section means a creditor who can come in under the bankruptcy and have the benefit of it, and does not mean a subsequent creditor. *Phillips v. Poland*, 1 L. R. C. P. 204; 35 L. J. 128.

The issue of an order of discharge of a bankrupt on appeal was suspended, and a reference back was directed to the commissioner to allow certain amendments. *Clarke ex parte, in re Scott*, 8 L. T. (N. S.) 814—C.

When an order of a commissioner refusing a bankrupt's order of discharge is reversed by the Court of Appeal in the latter court, it must proceed further and grant the bankrupt his order of discharge. *Williams ex parte, in re Williams*, 9 L. T. (N. S.) 358—C.

A case of mere suspicion of fraud is insufficient to ground an application to rescind an order of discharge, but it may stand over to afford time for further investigation. *Angerstein in re, ex parte Baily*, 9 Jur. N. S. 763; 8 L. T. (N. S.) 223—C. To entitle a creditor to appeal against an order of discharge, it is not necessary that he should have attended before the commissioner to oppose such order. *Monk and Brooks in re, ex parte Greenwood*, and *ex parte Burgess*, 10 Jur. N. S. 981; 33 L. J. Bank. 51; 12 W. R. 924; 10 L. T. (N. S.) 634.

The liability to pay calls on the shares of a company is not a liability to pay money upon a contingency, within the meaning of the provisions of the 178th section of the 12 & 13 Vic. c. 106; a discharge, therefore, under that act, is no bar to an action for calls made subsequently to the act of bankruptcy. *General Discount Company v. Stokes*, 10 Jur. N. S. 1205; 13 W. R. 138; 11 L. T. (N. S.) 423—C. P. *Martin's Patent Anchor Co. v. Morton*, 3 L. R., Q. B. 306; 37 L. J. 98.

A surety who has covenanted to pay premiums due on a policy of insurance in the event of his principal not doing so, cannot maintain an action against his principal for premiums paid after the principal has obtained his certificate in bankruptcy under the 24 & 25 Vic. c. 134, s. 154. *Saunders v. Best*, 10 Jur., N. S., 1204; 13 W. R. 160; 11 L. T., N. S., 421—C. P.

An administration bond, forfeited before the bankruptcy of the administrator, is not proveable under 12 & 13 Vict. c. 106, s. 178 and consequently a certificate under that act is no bar to an action on the bond. *Marchman v. Brooks* or *Hughes*, 2 H. and C. 908; 9 L. T., N. S., 726.

XII. As to Dividend, and Proceedings thereon.[1]

XIII. As to Allowances to the Bankrupt.[2]

XIV. As to Evidence and Disputing Bankruptcy.[3]

Although where an uncertificated bankrupt is sued by a creditor who has proved in the bankruptcy in respect of the same debt, the court of law would stay the action by injunction, yet a plea on equitable grounds of the bankruptcy, and the proof of debt is no defence to the action. *Spencer v. Demett*, 17. I. 66; 1 L. R. Ex. 123; 35 L. J. 73.

1 & 2 Vict. c. 110. The discharge of an insolvent debtor under the 1 & 2 Vict. c. 110, s. 75, was no release of a debt created by the payment by a surety after the discharge, of a bill of exchange, the consideration for which was inserted in the schedule as a debt for money lent due to the payee. *Litten v. Dalton*, 17 C. B., N. S. 178.

A promise not to proceed in bankruptcy for the costs of proceedings under a trader-debtor summons, is a good consideration to support a contract by the debtor to pay the costs. *Bracewell v. Williams*, 2 L. R., C. P. 196.

Where a person not having creditors is sued in a matter of tort, and damages recovered against him, and for the purpose of enabling him to defend the action he had parted with all his property, this is not a fraudulent parting with his property which would vitiate an adjudication in bankruptcy on his own petition. *In re Ensby. Ex parte Ensby*, 35 L. J. (Bkcy.) 23.

Where a bankrupt receives a conditional order of discharge, such discharge takes effect at once, and is good, even though the condition is not fulfilled until such time as the Court of Bankruptcy deals with it and declares it annulled. *King v. Watson*, 16 L. T., N. S. 67.

When a defendant has become bankrupt after an action brought against him, and he pleads his bankruptcy *puis darrein* continuance, the plaintiff may reply, admitting the truth of such plea, and sign judgment for his costs. *Howard v. Brown*, 7 L. T. (N. S.) 638.

To bring a bankrupt within the act, so as to disentitle him to his "discharge," on the ground of having incurred a debt without having a reasonable or probable ground of expectation of being able to pay the same, some specific debt must be pointed out as having been so incurred; it is not sufficient to show that the bankrupt systematically lived beyond his income. *Ex parte Brundritt; In re Caldwell*, 3 L. R. 3 Ch. 26.

Where a bankrupt was prosecuted by order of a commissioner for misdemeanours, under section 221, and other persons were indicted jointly with him for a conspiracy to commit a misdemeanour, the commissioner has power to order the costs of the prosecution, not only of the bankrupt, but of the other parties, to be paid out of "The Chief Registrar's Account." *In re Levi*, L. C. 37. L. J. B. C. 2 Ch. Ap. 493. *Ex parte Spooner, in re Hammond*, 37 L. J.; Bank. 2.

[1] After a great lapse of time, and the receipt of dividends by a person claiming under an assignment from the proving creditor, and after the death of such person, the title of his representative to subsequent dividends will be presumed, in the absence of any evidence that the debt was extinguished or satisfied. *Graham, Ex parte, in re Grant*, 33 L. J. Bank.; 9 L. T. (N. S.) 278.

[2] The per-centage allowed to a bankrupt in proportion to the amount of dividend paid to the creditors, does not vest until the dividend is declared, and consequently does not pass to the assignees under a second bankruptcy. *Cobb, Ex parte, in re Cobb*, 10 L. T. N. S. 465.

The power given, by the 194th section of the 12 & 13 Vict. c. 106, to the commissioner, of making an allowance to a bankrupt, is not taken away by sect. 109 of the 24 & 25 Vict. c. 134, except where the creditors come to an actual resolution under the latter section. *Ellerton, Ex parte, in re Leach*, 10 Jur. N. S. 502; 33 L. J. Bank. 32; 10 L. T. N. S. 317, 722. But the 174th section of the Bankruptcy Act, 1861, is inconsistent with and repeals the 195th section of the Act, 1849; and therefore if the creditors do not under the act of 1861 make any allowance to a bankrupt who has obtained his discharge, the Court has no power to do so under the act of 1849. *Ex parte Lovell, in re Lovell*, 33 L. J. B. C. 14.

Allowance of 1*l.* per week granted to a debtor where creditors had not, at the first meeting, carried a resolution for an allowance. *Turley, In re*, 13 W. R. 152.

The words "up to the time of passing his last examination," contained in sect. 109 of the 24 & 25 Vic. c. 134, mean, up to the time appointed, under sect. 140, for a bankrupt to pass his last examination. *Osborne, Ex parte, in re Jowett*, 10 Jur. N. S. 1137; 11 L. T. N. S. 336.

[3] Sect. 233 of the 12 & 13 Vic. c. 106, applies to civil matters only, and in criminal prosecutions against a bankrupt, formal proof of the trading and other requisites must be given. *Reg. v. Lyons*, 9 Cox, C. C. 299.

A bankrupt under sect. 221 of the 24 & 25 Vic. c. 134, is entitled to a copy of all the proceedings filed in court under his bankruptcy. *Tear, In re*, 10 L. J. N. S. 878.

Generally no creditor is entitled to see the proceedings under a bankruptcy until he has proved his debt; but when a bankrupt is adjudicated upon his own petition and in the statement of his debts, has inserted the name of any person as a creditor; so that there is no doubt of the fact, the

XV. As to Solicitors.[1]

XVI. As to Enforcing Obedience to Orders of the Court.[2]

XVII. As to Crimes and Penalties under 24 & 25 Vic. c. 134, and Misconduct of Parties.[3]

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court will grant him a copy of such statement. *Jarrett, Ex parte, in re Chapman*, 10 L. T. N. S. 105.

A person chosen creditors' assignee, who consented thereto and was orally appointed by the commissioner, can sue as such assignee, and if he produces on the trial a certificate of such appointment sealed with the seal of the court and signed by the commissioner, an objection that it was signed after the action was commenced cannot prevail. The certificate is a record of the court, and cannot be questioned. *Kelly v. Morray*, 1 L. R. C. P. 667; 35 L. J. C. P. 287.

The *London Gazette* containing the advertisement of the bankruptcy is rightly admitted as conclusive evidence of the bankruptcy as against the bankrupt, although a married woman, the prescribed period to take proceedings to annul the bankruptcy having elapsed, under 12 & 13 Vic. c. 106, s. 233. *Reg. v. Robinson*, 36 L. J., M. C. 78; 1 L. R., C. C. R. 80; 15 W. R. 966; 10 Cox, C. C. 467; 16 L. T. (N. S.) 605. Examinations of a bankrupt taken compulsorily before the commissioner in bankruptcy are rightly admitted in evidence against him on the trial of an indictment for embezzling property with intent to defraud creditors. *Ib. Reg. v. Levi*, C. C. R. 13 W. R. 724. *Reg. v. Robinson*, L. R. 1 C. C. R. 80; 36 L. J. (M. C.) 78. Every document which is referred to as an exhibit in an affidavit or a declaration should be annexed thereto and marked by the officer before whom the affidavit or declaration is made. *Guilhon, Ex parte, in re Dobson*, 10 L. T. (N. S.) 103.

[1] A solicitor retained by debtors to effect an arrangement with their creditors has a lien for costs incurred with reference to the sale and disposal of the effects of the debtors up to and inclusive of the execution of a deed of assignment. *Wickenden and Mansell, In re*, 12 W. R. 388. A bankrupt, upon consulting a solicitor before his bankruptcy, but after an act of bankruptcy committed, of which the solicitor had no notice as to the state of his affairs, told him that his cash-book contained all his receipts and payments and that anything else he wanted would be found in the office. He afterwards sent by post the key of a drawer in the office to his solicitor, who subsequently removed the papers and documents in the drawer, and also a tin box containing papers, &c., from the bankrupt's office to his own. The bankruptcy occurred a few days after the removal, whereupon the solicitor claimed a lien upon the papers and documents for his bill of costs:—*Held*, that he was entitled to such lien for his taxed costs, down to the date of the filing of the petition. *Markby, In re*, 11 L. T. (N. S.) 250.

[2] The Court of Bankruptcy has all the powers of a superior court to enforce obedience to its own orders by process of contempt. *Towsey, Ex parte, in re Towsey*, 10 L. T. (N. S.) 620.

[3] It is the duty of the Court of Bankruptcy to direct a prosecution under the Bankruptcy Act, 1861, s. 221, wherever there is reasonable evidence of guilt to lay before a jury; and irresistible evidence is not required. *Ex parte Stallard, in re Howard*, 37 L. J. B. C. 7; 3 L. R. Ch. 408. The power of the court, in dealing with orders of discharge, to punish the bankrupt for any offences enumerated, is alternative, not cumulative; and an order, both suspending the order of discharge and ordering the bankrupt to be imprisoned was discharged. *Ex parte Marks, In re Marks*, 1 L. R. Ch. Ap. 334; 35 L. J. Bkcy. 16.

Application for a criminal prosecution of a bankrupt should be *ex parte*, and counsel for the bankrupt ought not to be heard. *Hyams, Ex parte, in re Newberry*, 11 L. T. N. S. 390. The Court of Appeal will not interfere with the discretion of a commissioner who has directed the prosecution immediately after adjudication, and before the bankrupt had an opportunity of explanation. *Levi, Ex parte, in re Levi*, 13 W. R. 209; 11 L. T. N. S. 527, C.

An order stating that the bankrupt has committed "some one or more of the offences" specified in sect. 221, is properly framed, though the exact charge is not set forth. *Ib.* Upon an indictment under this act it is for the jury to judge of the "intent" from the general character of the transactions as indicated by the whole of the evidence. *Reg. v. Menser*, 4 F. & F. N. P. Cas. 45. *R. v. Howard*, 3 L. J. N. 44. As to form of indictment see *Nash v. Reg.* (in error), 10 L. J. N. S. 819; 33 L. J., M. C. 94; 9 L. T. N. S. 716; 9 Cox, C. C. 424, Q. B. Where a person obtained goods on approval, and pawned them, and afterwards obtained credit for them:—*Held*, that sect. 221 did not apply. *Reg. v. Lyons* 9 Cox, C. C. 299. M. was indicted under 12 & 13 Vic. c. 106, s. 251:—*Held*, that as the indictment alleged special grounds of adjudication which did not constitute an act of bankruptcy, it was bad, and the conviction founded upon it could not be supported. *Reg. v. Massey*, 1 L. & C., C. C. 206; 9 Cox, C. C 234. A married woman having been adjudicated a bankrupt upon her own petition, in which she described herself as a widow, was afterwards convicted under 24 & 25 Vic. c. 134, s. 221, of having embezzled her property:—

XVIII. As to Bankrupt's Privilege from Arrest, and how to Surrender if in Custody.[1]

XIX. As to Appeals.[2]

Held, that the conviction was wrong, as the property was her husband's. *Reg. v. Robinson*, 1 L. R. C. C. R. 80; 10 L. T. (N. S.) 605; 15 W. R. 966; 10 Cox, C. C. 467; 36 L. J. M. C. 78. An indictment averred that the bankrupt caused certain of his books to be altered, with intent to defraud, but it did not aver that it had been done "unlawfully:" —*Held*, sufficient if the intent to defraud was proved. *Reg. v. Leatherbarrow*, 17 L. T. (N. S.) 32. The court may, under special circumstances, order payment of the costs of a prosecution of a bankrupt instituted under the direction of the court, out of the estate in the hands of the trade assignee. *Ballard, In re*, 9 L. T. (N. S.) 399. Or out of the chief registrar's fund. *In re Levi*, 36 L. J. Bank. 49; 2 L. R. Ch. 493; 16 L. T. (N. S.) 270, C. But not the costs of an appeal where commissioner refuses to direct proceedings. 37 L. J. Bank. 7.

[1] The word creditor in 12 & 13 Vic. c. 106, s. 112, means a creditor who can come in under the bankruptcy, and have the benefit of it, and does not mean a subsequent creditor; therefore, where after bankruptcy, and during the continuance of an order for protection, but before discharge, the bankrupt incurs a debt and the creditor recovers a judgment, the bankrupt may be arrested on a *ca. sa. Phillips v. Poland*, 1 L. R. C. P. 204; id. 356; 35 L. J. 128. An order for protection, granted under 12 & 13 Vic. c. 106, s. 112, does not protect a bankrupt from arrest at the suit of a subsequent creditor, even though he has not passed his final examination. *Philips v. Poland*, 34 L. J. C. P. 128.

A creditor must elect between his remedy against a bankrupt, by arrest at common law, and his remedy under the bankruptcy. So soon as an execution creditor has proved his debt, his right to detain the bankrupt in prison is gone. *Sidney, In re*, 11 L. T. (N. S.) 205. *Eaton, In re*, 12 W. R. 640. On application for release from custody, each case must depend upon its own special circumstances, and it is the duty of the court so to consider it; and where it thinks fit, to ascertain the views of the creditors. *Strousberg, Ex parte, in re Strousberg*, 10 L. T. (N. S.) 104. And is only to be exercised for the purpose of advancing the interests of the creditors, and is not for the benefit of the bankrupt. *Stuart, Ex parte, in re Waugh*, 33 L. J., Bank. 4, C. A *feme sole* having separate property, without power of anticipation, contracted debts and married. Her husband became bankrupt, and having in his accounts included her debts, obtained his order of discharge: —*Held*, on her arrest, that the court ought not to interfere in ordering her release, but that she should be left to her remedy at law. *Butler, Ex parte*, 9 L. T. (N. S.) 660. A petition by a domiciled Scotchman, made a bankrupt in England, for leave to surrender, will not be refused on the ground that he opposed the petition for adjudication. *Young, Ex parte, in re Young*, 11 L. T. (N. S.) 355. A bankrupt is not protected from arrest by judgment-creditor in respect of a debt subsequently incurred. *In re Poland*, 35 L. J. B. C. 19. Although where an uncertificated bankrupt is sued by a creditor who has proved in the bankruptcy in respect of the same debt, the court would stay the action, yet a plea on equitable grounds of the bankruptcy, and the proof of debt is no defence. *Spencer v. Demett*, 1 L. R. Ex. 123; 35 L. J. 73. Sheriff's officer arresting a protected bankrupt is liable to a penalty under Act, 1849, s. 113. *Lees v. Newton*, 35 L. J. C. P. 285.

[2] A decision of a commissioner who declines to receive an affidavit, upon which an application for registration under sect. 200 of the 24 & 25 Vic. c. 134, is founded, on the ground of the insufficiency of the affidavit, is not the subject of appeal. *Anon.* 11 L. T. (N. S.) 466, C. Appeal from a decision of the commissioner, ruling that a bankrupt, at a private meeting, had no right to call upon a witness to produce a deed, was dismissed with costs. *Maw, Ex parte, in re Maw*, 11 L. T. (N. S.) 466, C. On the hearing of a petition for adjudication in bankruptcy, the commissioner ordered the clerk of the alleged bankrupts to attend and produce the books. On appeal by the clerk, who objected that the books were only in his custody, possession, or power for the purpose of making entries therein:—*Held*, discharging the order with costs, that these sections did not enable the court to order production under such circumstances; that it might be different had the bankrupts gone away and left the books in the possession of the clerk. *In re Leighton and Benett*, L. C. 66; 1 L. R. Ch. App. 331. The 32nd of the General Orders in Bankruptcy, of 6th November, 1861, providing that no new evidence shall be received on any appeal, unless the Court of Appeal shall, on the hearing thereof, so direct, applies to evidence upon the matters in issue, and not to evidence as to what took place in the court below. *Page, Ex parte, in re Neal*, 1 De G. J. & Sm. 283; 1 id. Bank. App. 59. In the former case, some ground must be shown for the admission of the new evidence. *Ib.* It is not necessary that a notice of motion by way of appeal should, on the ground, among others, of the rejection of evidence, state that ground. *Ib.* An application to the court to allow fresh evidence to be received on an appeal motion, on the ground

BARRATRY.[1] *See* Champerty; Maintenance.

BARRISTER. 2 Ab. 373.

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IV. Right to and Obligation of Parties to Appear by or in Person, p. 68.

V. Retainer of, p. 68.

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that the commissioner had no opportunity of considering it, refused. *Holford, Ex parte, in re Holford*, 11 L. T. (N. S.) 465, C. Where an application had been made to the Court of Appeal to allow further evidence to be admitted, and the affidavits had been filed, subject to such permission, and read by the respondents, the matter was ordered to stand over, with liberty to the respondents to answer the affidavits, without prejudice to the question of their admissibility. *Robertshaw, Ex parte, in re Kay*, 10 L. T. (N. S.) 254, C. The conclusion "that the accounts of a bankrupt are unsatisfactory" is of too general a nature to allow the Court of Appeal to interfere with a decision founded upon it. *Quinn, Ex parte*, 10 L. T. (N. S.) 704, C. Leave to appeal to the House of Lords having been granted to a bankrupt against a decree of the Lord Chancellor, whereby he reversed an order of a commissioner dismissing the petition for adjudication, upon a representation by the petitioning creditor that the bankrupt had recently made an assignment of all his property to a relative, with a view of avoiding payment of the very debt on which the petition was founded, it was ordered that security be given by the assignees of the deed, otherwise the stay of proceedings, which had been ordered, pending the appeal before the Lord Chancellor, could not be continued, but the advertisement must issue at the expiration of a week. *Williams, Ex parte, in re Williams*, 10 L. T. (N. S.) 363, C. Under the 12th section of 12 & 13 Vic. c. 106, the time allowed for appealing must be calculated from the date of the decision or order, and not from the time of its being drawn up. *Dudley and West Bromwich Banking Company, Ex parte, in re Hopkins*, 9 Jur. N. S. 702; 32 L. J. Bank. 68; 11 W. R. 576; 8 L. T. (N. S.) 189, C. An order having been made in July, 1861, granting a bankrupt his discharge, with a condition as to his after-acquired property, the Lords Justices refused an application by the bankrupt for leave to appeal to the House of Lords, and determined to rehear the case themselves, directing that a new deposit of 20*l.* should be made. After the case had been so reheard, an order was made, varying the former order, by suspending it for a certain time, giving the bankrupt protection in the meantime, and an unconditional discharge at its termination. *Drinkwater, Ex parte, in re Drinkwater*, 32 L. J. Bank. 20, L. J. The parties to an appeal in bankruptcy are not precluded by the 32nd Order from giving evidence, for the purpose of informing the court of what passed on the hearing before the commissioner. *Page, Ex parte, in re Neal*, 9 Jur. N. S. 8; 32 L. J., Bank. 14. The provisions of the 24 & 25 Vic. c. 134, apply to the non-introduction of new evidence upon matters in issue only. *Ib.* The Court of Appeal has jurisdiction to allow fresh evidence in addition to that before the court below; and when produced, the Court of Appeal will entertain the question, and not send it back. *Miller, Ex parte, in re Miller*, 32 L. J., Bank. 45; 7 L. T. (N. S.) 657, L. J. When fresh evidence in a matter sent back to a district court for further consideration has been permitted, and it appears that the witnesses reside in London, the court will order that fresh evidence be taken before one of the commissioners in London. *Hill, Ex parte, in re Cardiff Preserved Coal and Coke Company*, 7 L. T. (N. S.) 659, L. J.

An application for leave to appeal from the Lord Chancellor or Court of Appeal in Bankruptcy, may be made *ex parte*. *Ex parte Kempson re Barker*, 13 W. R. 446.

Notice of motion of an appeal from a commissioner's decision was duly given within twenty-one days; but application to the registrar to enter the appeal was not given until after twenty-one days:—*Held*, the notice of appeal was a sufficient compliance with the statute, and the registrar was directed to receive the appeal. *Ex parte Bromley, Re Redfearn*, L. C. 25; 11 Jur. N. S. 611.

On a bankruptcy appeal the court will not allow fresh evidence on matters which were in issue before the commissioner, to be used. *In re Lascelles*, 1 L. R. Ch. App. 127.

Where defendants appealed against a decision, and before the appeal was fully heard, the defendants become bankrupt, and their assignee having been made a defendant by revivor, refused to go on with the appeal. The appeal was dismissed; plaintiff to take the deposit in part payment of his costs, and to be at liberty to prove for the difference. *Dangerfield v. Jones*, 14 W. R. 356.

[1] In an action against the shipowner for

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VII. His Fees a Honorarium, p. 68.
VIII. Not liable to an Action for Negligence, p. 68.
IX. His Privilege in Court, p. 69.
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I. Authority of Benchers of Inns of Court.[1]
II. Stamp Duty on Admission. *See* 27 & 28 Vic. c. 56, s. 16.
III. Serjeants entitled to Seats upon the Bar.[2]
IV. Right to and Obligation of Parties to Appear by or in Person.[3]
V. Retainer of.[4]
VI. Power over Proceedings.[5] *See post,* Compromise.
VII. His Fees a Honorarium.[6]
VIII. Not liable to Action for Negligence.

loss of goods caused by the ship sinking in consequence of a collision with another ship, from the default of the crew of defendant's ship in not observing the sailing rules—*Held*, that the loss was not barratry, and that the non-observance of the sailing rules not a "wilful default." *Grill v. General Iron Screw Collier Company*, 17 & 18 Vict. c. 104, s. 299; 25 & 26, id. 63 & 28, L. R., 1 C. P., 600; 35 L. J. 321.

[1] The benchers of an inn of court, engaged in an inquiry into the conduct of a barrister, a member of the inn, in relation to certain transactions, may justify taking by force a book obtained by a witness under examination. *Hudson v. Slade*, 3 F. and F. 390.

[2] Serjeants-at-law not having patents of precedence are entitled to be accommodated with seats within the bar during term in the court of Queen's Bench and Exchequer. Mem. 5 B. & S. 722.

[3] A barrister who is a party in an appeal in the House of Lords, must elect to conduct his own case or to have it conducted by counsel. *New Brunswick and Canada Railway and Land Company v. Conybeare*, 9 H. L. Cas. 711.

Barristers may act as assessors to courts-martial, and be retained as counsel for the defence, or for the prosecution. *Horse Guards Circular*, L. M. & R., vol. 20, No. 39, N. S. p. 169.

[4] The courts have no jurisdiction to interfere between counsel and their clients in a question of retainer, which must be settled by the counsel themselves, guided by the opinion of the leading members of the bar. *Taylor v. Clark*, 13 Ir. C. L. R. 571 C. P.

Defendant having obtained an order to change the venue, secured the only Q.C. on that circuit, and the most eminent member of the outer bar:—*Held*, that was not such an abuse of his position, as to induce the court to change the venue to another circuit. *Curtis v. Lewis*, 5 B. & S. 568.

The appointment or holding office of any barrister as a commissioner under 16 & 17 Vic. c. 57, shall not disqualify for the office of Revising Barrister, 29 & 30 Vic. c. 54.

[5] Counsel has an apparent authority to do everything in the course of the trial of a cause which he judges to be the best for his client. *Strauss v. Francis*, 6 B. & S. 365; 1 L. R., Q. B., 379; 12 Jur., N. S., 486; 35 L. J., Q. B., 133; 1 L. R. 374. It would be unprofessional to accept a brief under the terms of his discretion in the conduct of the cause being limited. And where the apparent authority of counsel is withdrawn in the course of the trial, the proper course is for him to return his brief. *Id.* And may agree to a non-suit, though his client objects. *Lynch v Coel*, 12 L. T., N. S., 548. But he has no authority (at least, in Chancery) to bind his client by a compromise made out of court. *Green v. Crochet*, 32 L. J. Ch. 606. After counsel has appeared and been partly heard in a cause, his client cannot revoke this authority so as to address the court himself. *R. v. Mayberry*, 11 L. T. 17.

A promise made by a client to pay money to a counsel for his advocacy, whether made before, or during, or after the litigation, has no binding effect. *Kennedy v. Broun*, 13 C. B., N. S., 677; 9 Jur. N. S., 119; 32 L. J., C. P., 137; 11 W. R. 284; 7 L. T., N. S., 626. The relation of counsel and client renders the parties mutually incapable of making any contract binding either in law or equity, of hiring and service concerning

IX. His Privilege in Court.[1]

X. Suspending for Misconduct.[2]

BASTARD. 2 Ab. 384. *See* Affiliation; as to Settlement of. *See post*, Settlement; Proceedings in Bastardy. *See* 8 & 9 Vic. 10.

I. Who is, p. 384.[3]

II. Maintenance and Support independently of the Statute.[4]

BATTERY. 1 Ab. 562. *See* Assault and Battery.

BAWDY-HOUSE. *See* Disorderly House; Nuisance.

BEERHOUSE. 1 Ab. 586. *See* 1 Geo. 4, c. 64; 4 & 5 Vic. 4, c. 85; 3 & 4 Vic. 61; 17 & 18 *id.* 79; *ante*, Ale and Beer-houses; *post*, Inn and Innkeepers.

BEGIN, Right to.[5] *See* Desmurrer. As to the right to begin in Appeals from Justices, *see* Sessions.

BENEFICES, Sequestration of. 12 & 13 Vic. c. 67; 23 & 24 id. 142.

Union of. 18 & 19 Vic. c. 127.

Sale of, by Lord Chancellor. 26 & 27 Vic. c. 120.

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advocacy in litigation. *Ib.* Therefore where a client executed a deed, prepared by the counsel, by which she conveyed to him certain real estates, was ordered to be delivered up to be cancelled. *Broun v. Kennedy*, 9 Jur. N. S. 1163; 33 L. J. Chanc. 71; 9 L. T. N. S. 302—R.

[1] A court of quarter sessions has power to fine a barrister who is guilty of contempt of court while engaged in his professional duty. *Pater, In re*, 5 B. & S. 299; 10 Jur. N. S. 972; 33 L. J. M. C. 142; 10 L. T. N. S. 376—Q. B. The court of Q. B. will not interfere if there are reasonable grounds upon which the conduct of the person might be treated as a contempt. (*Ib.*) Counsel may with propriety complain of acts having the appearance of partiality done by one of the jurymen; but not to do so in violent and abusive language. (*Ib.*)

[2] A barrister cannot be suspended from pleading in court for misconduct committed by him as a suitor, not as an officer of the court. *In re Wallace*, 36 L. J. P. C. 9; 1 L. R. P. C. 283; 4 Moore, P. C. C. 140.

[3] Where the evidence as to the probability of access between husband and wife is such as to leave any reasonable doubt on the mind of the court, the presumption is in favour of the legitimacy of the child. *Plowes v. Bossey*, 31 L. J. Ch. 681; 2 Drew. & Sm. 145; 7 L. J. N. S. 306. And to rebut the presumption it is not necessary to prove impossibility of access on the part of a husband, but the evidence must preponderate, so to convince the mind of the judge that access did not take place at a time and under circumstances which would enable the husband to be the father of the child. *Atchley v. Sprigg*, 10 Jur. N. S. 144; 33 L. J. Ch. 345; 10 L. T. N. S. 16. *Groves v. Gurney*, 5 L. J. 380.

A mother's evidence is inadmissible to prove the legitimacy or illegitimacy of her child born during wedlock. *Atchley v. Sprigg*, 10 Jur. N. S. 144; 33 L. J. Ch. 345.

[4] The Court of Chancery will not order money to be paid out of court on the presumption that a woman aged forty-nine is past child-bearing. *Groves v. Groves*, 12 W. R. 45. *Price v. Boustead*, 8 L. T. N. S. 565, but acted on the presumption in the case of a spinster aged fifty-three. *Haynes v. Haynes*, 35 L. J. 303.

There is no obligation upon the personal representatives of the mother of a bastard child to expend the money or property which belonged to the mother, in the maintenance of such child. *Ruttinger v. Temple*, 9 Jur. N. S. 1239; 33 L. J. Q. B. 1; 9 L. T. N. S. 256. A woman who, at the request of her seducer, had laid out money in necessaries for her confinement and the support of her child, is entitled to sue him for money paid; and her letters to him not answered were admitted as evidence against him. *Gore v. Hawsey*, 3 F. & F. 509. It is said that a contract to support a child (six years old) till it should be able to do for itself is within the statute and proved, and should be in writing. 14 W. R. 922, Ir.

The fact that a summons in bastardy has been dismissed on the merits does not prevent them from hearing a second, and, if they think proper, making an order upon the defendant. *R. v. Grant*, 36 L. J. M. C. 2 L. R., 2 Q. B. 466.

[5] In cases of booty of war those who have the burden of proof have the right to begin. *The Bunda Booty*, 35 L. J. ad 14.

BEYOND Seas.[1]

BELL-RINGING.[2]

BENEFIT Building Society. 3 Ab. 1; 6 & 7 Wm. iv. c. 32; 18 & 19 Vic. c. 65; 21 & 22 id. c. 101; 23 id. c. 13; 24 id. c. 58. As to wind-up, *see* 11 & 12 Vic. c. 45. *See post*, Friendly Societies.

I. Constitution and Title of Society.[3]

II. Mortgage of and Right to Distrain.[4]

III. Liability of Society on Contracts.[5]

IV. Jurisdiction of Courts over.[6]

V. Right to Vote.[7]

VI. Exemption from Stamp Duties.[8]

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[1] By the 19 & 20 Vict. c. 97, s. 12, no part of the United Kingdom of Great Britain and Ireland, or of the Channel Islands, or the islands adjacent, being within the dominions of her Majesty, is deemed to be "beyond seas" within the meaning of that act, or the 4 & 5 Anne, c. 16.

[2] The control of the church-bells belongs to the incumbent; but to constitute an ecclesiastical offence the ringing complained of, must be against his wishes, expressed either in a general or particular prohibition. *Daunt v. Crocker*, 37 L. J. Ex.

[3] A building society, registered under 6 & 7 Will. 4, c. 32, having employed their funds in the purchase of an estate, an allottee subsequently refused to pay the amount of fines due from him, upon the ground that, in making such purchase, the society had acted *ultra vires*, and had ceased to exist. He was aware when he took shares in the society that one of its objects was the purchase of land:—*Held*, that the misapplication (if any) of the funds had not the effect of putting an end to the society; that such misapplication might be remedied by a court of equity; and justices had jurisdiction. *Hughes v. Layton*, or *D'Eyncourt*, 10 Jur. (N. S.), 513; 33 L. J., M. C., 89; 9 L. T. (N. S.) 712; 4 B. & S., 820.

[4] As to trustees and mortgagees distraining, *see Turner v. Barnes*, 2 B. & S. 435. The principal and interest of a mortgage debt lent by a building society was payable by equal instalments. By the rules incorporated in the mortgage, there was a fine of a shilling per month per pound on all instalments unpaid:—*Held*, that the rule was not void as being unreasonable (*Parker v. Butcher*, 16 L. J., Chanc. 552; 3 L. R., Eq. 762—R.); nor the fines in the way of a penalty against which the court would relieve. A rule declared that "the minutes of the managers entered in the minute-book and signed by the managers concurring therein, shall be sufficient authority:"—*Held*, that the omission of the managers to sign, in conformity with the rule, did not invalidate their execution of the powers entrusted to them. 10 L. T. (N. S.), 646—Q. B.

[5] A benefit building society is bound by orders for necessary repairs given by the secretary, though not sanctioned by the number of trustees required by the rules for transacting the ordinary business of the company, or entered in the minute-book. *Allard v. Bourne*, 15 C. B. (N. S.), 468.

[6] The Court of Chancery has jurisdiction, under the Companies' Act, 1862 (25 & 26 Vict. c. 89) to wind up benefit building societies. *Midland Counties Benefit Building Society, In re*, 33 L. J., Chanc., 739—L. J. Such societies are not within the provisions of the acts regulating friendly societies and industrial and provident societies (25 & 26 Vict. c. 87). *Ib.* As to the extinguishment of shares *see Priestley v. Hopwood*, 10 L. J. (N. S.) 646. The fact that a society is formed under 3 & 4 Vict. c. 110, s. 16, and that its rules were duly certified and allowed and confirmed by the Court of Quarter Sessions, does not preclude the magistrate, when hearing a summons under the act, from putting questions which might show that the society was not "such a society" as was entitled to the benefit of the act. *Reg. v. Davis*, 14 W. R. 329. *See Farmer v. Giles*, 30 L. J., Ex. 65; 4 H. & N.; D. 53.

[7] As to the jurisdiction of County Court *see Ex parte Woodbridge*, 31 L. J.; Q. B. 122; 3 B. & S. 844. A society may be wound up in County Court, 32 Bev. 57.

[8] The annual value of property unincumbered was £3:—*Held*, that a member of a friendly society had an interest of the clear yearly value of 40s., and was entitled to vote as a freeholder. *Robinson*, App., *Dunkley*, Resp., 15 C. B. (N. S.) 478; 1 H. & P. 1; 33 L. J., C. P., 57.

[9] A mortgage to the trustees of a benefit building society by a stranger to secure the repayment of money advanced to him out of the surplus funds, is exempt from stamp duty. *Thorn v. Croft*, 36 L. J. 668; 3 L. R., Eq. 193. By 31 & 32 Vic. c. 124, exemption from stamps not to extend to mortgages after passing of Act.

VII. Settling by Arbitration.[1]

BETTING OFFICES.[1] *See* Gaming; suppressed by 16 & 17 Vic. c. 119.

BIGAMY.[2] 2 Abr. 395. *See* 24 & 25 Vic. c. 100, s. 57.

BILL in Chancery. *See* Equity, Bill in.

BILL of Costs. *See* Attorney, *ante*, p. 5; and *post*, Costs.

BILL of Exceptions.[3]

BILLS of Exchange and Promissory Notes. 2 Ab. 400.

I. Their Nature and Properties, p. 72.

(A) *General Form of, and parol contracts varying*, p. 72.

(B) *Amount or Sum*, p. 72.

II. Of the Capacity of Persons Parties to Bills and Notes, p. 72.

III. Stamps on Bills and Notes, p. 73.

IV. Of the Consideration and Accommodation Bills, p. 74.

V. Bills and Notes obtained by Threats or Fraud, p. 74.

VI. Of the Transfer of Bills and Notes, and effect of such Transfer, and when to be made, p. 74.

VII. Of the Presentment for Acceptance, p. 74.

(A) *When necessary*, p. 455.

VIII. Of Acceptance, and Liability of Acceptor, and when Discharged.

IX. Presentment for Payment, Days of Grace, p. 75.

X. Notice of Dishonour, p. 75.

(A) *To whom, and Form of*, p. 75.

(B) *Within what Time must be given, and Waiver of*, p. 75.

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[1] *See Reg. v. D'Eyncourt*, 4 B. & S. 820; *Wright v. Deley*, 4 H. & C. 209.

[2] The proof that a person charged with bigamy has not been continually absent from his wife for seven years, and that she was not known to him to be living within that time, is on the prosecution and not on the prisoner. *Reg. v. Heaton*, 3 F. & F. 819; *Cargerwen*, 35 L. J., M. C. 58; 1 L. K. C. C. On such an indictment a photographic likeness of the first husband was allowed to be shown to the witnesses present at the first marriage, in order to prove his identity. *Reg. v. Tolson*, 4 F. & F. 103.

A marriage in a chapel in the presence of the registrar of the district and two witnesses, is sufficient without proving that the chapel was registered. *Reg. v. Cradock*, 3 F. & F. 837.

The due publication of banns was completed on the 1st July, and the marriage took place on the 1st October following. The 4 Geo. 4, c. 76, s. 9, requires marriages by banns to be solemnized within three months after publication of banns:—*Held*, that the marriage was valid, it not being found that the parties knowingly and wilfully intermarried without due publication of banns. *Reg. v. Clarke*, 16 L. T., N. S. 429; 10 Cox, C. C. 474.

A conviction for bigamy cannot be sustained when the second marriage was within 19 Geo. 2, c. 13, s. 1 (Ir.), which enacts that every marriage between a Papist and a professing Protestant within twelve months, if celebrated by a Popish priest, shall be absolutely null and void. *Reg. v. Fanning*, 14 W. R. 701; 10 Cox, C. C. 441—Ir. C. C. R.

[3] A judge may refuse to sign a bill of exceptions where he dissents from the view taken by the parties of the sense in which he used the words addressed to the jury. In such case the remedy is to move for a new trial. *Attorney-Gen. v. Sillim*, 9 L. T., N. S., 612, Ex. The Court cannot go out of the exceptions on the record to ascertain what the objections made at the trial really were. *Whaley v. Carlisle*, 17 Ir. Com. Law Rep. 792.—C.P.

XI. Foreign Bills, and Foreign Law relating to them, p. 76.
XII. Of Destroyed Bills and Notes, and Altering and Forging of, p. 76.
XIII. Cancellation of Bill or Note, p. 76.
XIV. Action on Bill, or Note, p. 76.

(A) *Pleadings*, p. 76. | (C) *Damages, interest, and expenses*, p. 77.
(B) *Evidence*, p. 77. | (D) *Costs*, p. 77.

(E) *Executions*, p. 77.

XV. Summary Procedure, p. 77.

I. Their Nature and Properties.

(A) *General Form of,*[1] *and parol contracts varying.*[2]

(B) *Amount or Sum.*[3]

II. Of the Capacity of Persons Parties to Bills and Notes.[4]

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[1] The following document held to be admissible without either a promissory note or an agreement stamp: "I, J. D., have this day borrowed of J. C. 300*l.* at 4*l.* per hundred, payable yearly." *Cory v. Davies*, 14 C. B., (N. S.) 370. So "On demand, we jointly and severally promise to pay to Messrs. W. P. and M., or to their order, or the major part of them, 100*l.*," is a note upon which the three payees may maintain an action. *Watson v. Evans*, 1 H. & C. 652; 32 L. J. Exch. 137. So "On demand I promise to pay to the trustees of the Wesleyan chapel or their treasurer for the time being," by four equal instalments, is a valid note. *Holmes v. Jaques*, 1 L. R., Q. B., 376; 35 L. J., Q. B. 130. But an instrument in the following form, "Four months after date pay to my order 300*l.* for value received," addressed to and formally accepted by the party, but having no date and no drawer's name, is neither a bill of exchange nor a promissory note. *M'Call v. Taylor*, 19 C. B. (N. S.), 301; 11 Jur. (N. S.), 529; 34 L. J., C. P., 365; 12 L. T. (N. S.), 461.

[2] *See Mosely v. Harford*, 10 B. & C. 729. *Forbes v. Jolly*, 10 M. & R. 703.

[3] By 26 & 27 Vic. c. 105, s. 1 (passed 28th July, 1863), the 17 Geo. 3, c. 30, which prohibited the uttering or negotiating in England any note, not being a note payable to bearer on demand, or undertaking in writing, being negotiable or transferable, for the payment of 20*s.*, or above that sum and less than 5*l.*, and also the 17th section, as to notes, of the 8 & 9 Vic. c. 38, be issued in Scotland, are repealed. And by section 2 the Act shall continue in force for three years to 1867 by 29 & 30 Vic. c. 105, and by 30 & 31 id. c. 143.

[4] One who takes from a member of a trading firm, in satisfaction of his separate debt, a negotiable security in the name of the partnership, is bound to show that it was accepted or indorsed with the concurrence of the other partners. *Leverson v. Lane*, 13 C. B. (N. S.), 278; 9 Jur. (N. S.), 670; but a bill accepted in the name of a firm, in the hands of a bonâ fide holder, is valid against the firm, although the partner had no authority to pass it, and his doing so was fraudulent. *Wiseman v. Easton*, 8 L. T. (N. S.), 637.—Therefore where V. and S. agreed that S. only should accept bills in the partnership name. V., in fraud of his partner, accepted a bill in the partnership name for a private debt, and the bill was indorsed to the plaintiff, the bill being tainted with fraud in its inception, the ordinary rule applies, that the onus of proof is on the plaintiff to explain under what circumstances he became possessed of the bill. *Hogg v. Skeen*, 18 C. B. (N. S.) 426; 34 L. J., C. P., 153; 11 L. T. (N. S.), 709. See *Darlington and Stockton Banking Company, ex parte, in re Riches*, 34 L. J., Bank., 10; 12 L. T. (N. S.), 372.—C.

A secretary of a benefit building society signed a promissory note in the following form: "Midland Counties Building Society, No. 3, Birmingham, 1st September, 1856. One month after demand, we jointly and severally promise to pay J. B. 120*l.* with interest thereon after the rate of 6*l.* per cent. per annum (payable half-yearly), for value received. W. H., S. B., directors; W. F., secretary:"—*Held*, that the secretary was personally liable on the note. *Bottomley v. Fisher*, 1 H. & C., 211; 31 L. J., S. C., 417. S. P. 3 L. J. N. 23.

A proviso in a deed of a company, under 7 & 8 Vic. c. 110, restricting the liability of the shareholders upon bills of exchange, which the directors have by the deed authority to draw and accept, is void as regards

III. Stamps on Bills and Notes.[1]

the public; and a bill drawn under such authority binds, even in the hands of a holder with notice. *State Fire Insurance Company. ex parte, in re Meredith Conver*, 9 Jur. (N. S.), 298; 32 L. J. C. 300; 8 L. T. (N. S.), 146.

A railway incorporated by special Act, containing the usual clauses, cannot accept bills. *Bateman v. Mid Wales Railway*, 1 L. R., C. P., 499; 35 L. J., C. P., 205. *National Discount Company v. the Same; Overend, Gurney, & Co. v. the Same*, C. P.; 1 L. R., 1 C. P., 499.

Where a company is being wound up, and several liquidators are appointed, it is necessary, in accepting a bill of exchange on the part of the company, that it should be signed by two or more of them, unless at the time of their appointment it is determined that the acceptance by one should be sufficient. *In re London and Mediterranean Bank*, 16 L. T. (N. S.) 691; *in re Commercial Bank Corporation of India and the East, ex parte Smith, Fleming and Co. ex parte Gledstone*, 36 L. J., Chanc. 333.—L. J.

An agent authorised to carry on a business for his principal may bind the latter by accepting and negotiating bills. *Edmunds v. Bushell*, 1 L. R. 97; 12 Jur. 322, 351 L. J., Q. B. 24.

An acceptance "per proc." implies a special and limited authority, calling for inquiry as to the authority. An acceptance, "for, &c.," is not so, and the liability of the principal depends on the general law of agency. *O'Reilly v. Richardson*, 17 Ir. Com. Law Rep. 74, Ex.

The separate estate of a married woman is not liable after her death for the payment of a note given by her during coverture. *Shattock v. Shattock*, 2 Q. R. Eq. 82; 35 L. J. C., 509, but such a note may be a good consideration for one given after her husband's death, even although the original be barred by the Stat. of Limitations. *La Touche v. La Touche*, 3 H. & C. 576; 34 L. J., Ex. 85; *see* 35 L. J. 509; 2 L. R. C., 182.

To a count by husband and wife upon note passed to the wife *dum sola*, the defendant pleaded that the note was passed in fraud of his marriage, and void. The plaintiff replied, upon equitable grounds, that the plaintiff, her husband, married before the note became due, upon the faith that it would be duly paid, and without notice of the fraud—*Held*, that the note was void *ab initio*. *Lee v. Hayes*, 17 Ir. Com. Law, Rep. 394 —C. P.

The discounter of a bill has no implied authority to put the drawer's name to it, though the omission be unintentional. *Harrop v. Jukes*, 30 L. J., C. P., 283; 10 C. B. 196. But holder inserting "on demand" will not vitiate. 37 L. J. Q. B. 201.

[1] INLAND BILLS OR PROMISSORY NOTES.

Not exceeding	£5	£0	0 1
,,	10	0	0 2
,,	25	0	0 3
,,	50	0	0 6
,,	75	0	0 9
,,	100	0	1 0
,,	200	0	2 0
,,	300	0	3 0
,,	400	0	4 0
,,	500	0	5 0
,,	750	0	7 6
,,	1000	0	10 0
,,	1500	0	15 0
,,	2000	1	0 0
,,	3000	1	10 0
,,	4000	2	0 0
Exceeding	£4000, for every £1000		
or part of	£1000	0	10 0

FOREIGN BILLS.

Drawn in, but payable out of the United kingdom.

If drawn singly, or otherwise than in a set of three or more, the same duty as Inland Bills.

If drawn in sets of three or more, for every Bill of each set—

Not exceeding	£25	£0	0 1
,,	50	0	0 2
,,	75	0	0 3
,,	100	0	0 4
,,	200	0	0 8
,,	300	0	1 0
,,	400	0	1 4
,,	500	0	1 8
,,	750	0	2 6
,,	1000	0	3 4
,,	1500	0	5 0
,,	2000	0	6 8
,,	3000	0	10 0
,,	4000	0	13 4
Exceeding	£4000, for every £1000		
or part of	£1000	0	3 4

Drawn out of, but payable in the United Kingdom, the same duty as Inland Bills.

Drawn out of, and payable out of the United Kingdom, but negotiated in the United Kingdom, the same duty as on Foreign Bills drawn in, and payable out of the United Kingdom.

Drawn for the payment of money exceeding 500*l.*, and drawn out of the United Kingdom, and payable, endorsed, or negotiated within the United Kingdom—

For every 100*l.*, or part thereof . 1*s.* 0*d.*

By 27 & 28 Vic. c. 56, s. 2, any bill payable on demand, which shall be indorsed out of the United Kingdom, or purport to be so indorsed, shall, for the purpose of charging the stamp duty thereon, be deemed to be a

IV. Of the Consideration and Accommodation Bills.[1]

V. Bills and Notes obtained by Threats or Fraud.[2]

VI. Of the Transfer of Bills and Notes, and Effect of such Transfer, and when to be made.[3]

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foreign bill, but shall be chargeable with the same amount of duty as an inland bill.

[1] The suspension of the remedies against future property, in respect of a debt from which a debtor has been discharged under the Insolvent Act, is a sufficient consideration to support an acceptance of a third party. *Bernal v. Croker*, 15 Ir. Com. Law Rep. 194.

The giving up possession of a disputed will is sufficient consideration for a pro-note for an agreed sum. *Smith v. Smith*, 13 C. B. N. S. 418; 32 L. J. C. P. 149.

Although it is a well-established rule that a defendant to an action on a bill, cannot plead a partial failure of the consideration where it amounts only to a claim for unliquidated damages; yet, where the plea shows a good answer to the whole amount, except a precise and definite sum, the case is taken out of the rule. *Cochrane v. Green*, 9 C. B., N. S., 448; *Agra and Masterman's Bank v. Leighton*, L. R., 2 Ex. 56; 36 L. J. 33.

Defendant pleaded that he borrowed 1500*l.* of the plaintiff, and it was agreed between them that he should pay interest at the rate of more than five per cent contrary to the statutes then in force, and he accepted bills to the amount, that these bills were dishonoured at maturity, and that after the passing of the 17 & 18 Vict. c. 90, the bills sued on were given by way of renewal of the old bills, and to secure the payment to the plaintiff of the money secured by the old bills:—*Held*, that the plaintiff was entitled to recover on them. *Flight v. Reed*, 32 L. J., Exch., 265; 8 L. T., N. S., 638.

The holder of an accommodation bill who has received part of the money due on the bill from the drawer cannot afterwards, in an action against the acceptor, recover the whole amount of the bill from him, but must give him credit for the amount already received from the drawer. *Cook v. Lister*, 13 C. B., N. S., 543; 9 Jur., N. S., 823; 32 L. J., C. P., 121; 7 L. T., N. S., 712. *Ewin v. Lancaster*, 6 B. & S.

A note in favour of a party who bonâ fide believes that he has a legal claim, and the drawer believing himself to be personally liable, to avoid legal proceedings makes it for a less amount, and hands it over to the plaintiff is liable to be sued. *Cook v. Wright*, 30 L. J., Q. B., 321; 1 B. & S. 559.

Where a bill of exchange is tainted with fraud in its inception, the party suing on it is bound to show that he gave value for it; and *Musgrave v. Drake*, 5 Q. B., 185, does not decide the contrary, the question there having been one of pleading only. *Hogg v. Skeen*, C. P., 13 W. R. 383.

[2] Forbearing to prosecute for obtaining money under false pretences is an illegal consideration. *Clubb v. Hudson*, 18 C. B., N. S., 414. In an action on a bill, the defence being that the acceptor was threatened by the drawer, that if it were not given, he would make a criminal charge:—*Held*, that unless the bill was obtained solely by reason of such threat, it would be no defence. *Thompson v. Holland*, 11 W. R. 260—Q. B. If A., by means of a false pretence, or a promise or condition which he does not fulfil, procures B. to give him a note in favour of C., to whom he pays it, and who receives it bonâ fide for value, B. remains liable on his acceptance, and can only relieve himself from his promise to pay C. by showing that C. is not holder for value, or that he received the instrument with notice, or not bonâ fide. *Watson v. Russell*, 3 B. & S. 34; 9 Jur., N. S., 249; 31 L. J., Q. B., 304; *Horsfall v. Thomas*, 1 H. & C. 90.

The defendant having petitioned the Insolvent Court, he is opposed by the plaintiff; it was agreed that the defendant should give the plaintiff a note for his debt, and that the plaintiff should not oppose the making of a final order. This arrangement was sanctioned by the commissioner. The note was accordingly given, the opposition withdrawn, and the final order for protection made:—*Held*, that the agreement was illegal as against the policy of the law. *Humphrey v. Welling*, 1 H. & C. 7.

[3] One who receives a bill unindorsed (though for value) acquires no better title under it than the person from whom he receives it himself has. *Whistler v. Foster*, 14 C. B., N. S., 248; 32 L. J., C. P., 161; 8 L. T., N. S., 317. An acceptor by his conduct and circumstances may be estopped from disputing the endorsement. *Aspital v. Bryan*, 3 B. & S. 474; 33 L. J., Q. B., 328; 5 B. & S. 724; 11 L. T., N. S., 221, Ex. Ch. If a creditor takes a bill from his debtor as collateral security for the payment of his debt, and retains it until it becomes due, his duty is to present the bill for payment, and give notice of dishonour. If he omits to do this, and the bill consequently becomes worthless, he cannot afterwards sue his debtor, either on the bill, or on the original consideration. *Peacock v. Purssell*, 14 C. B., N. S., 728; 32 L. J., C. P., 266; 8 L. T., N. S., 636.

A defendant, intending to become security to the plaintiffs for money to be advanced by them to B., wrote his name on the back of a blank bill-stamp; after which he wrote his name across it as acceptor, and then handed it to the plaintiffs, who filled it up as a bill payable to their own order:—*Held*,

VIII. Of Acceptance, and Liability of Acceptor, and when Discharged.[1]

IX. Presentment for Payment, and Days of Grace.[2]

X. Notice of Dishonour.

(A) *To whom, and form of.*[3]

(B) *Within what time to be given, and waiver of.*[4]

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that although the defendant could not be sued as indorser, he was liable as drawer of a bill payable to bearer. *Matthews v. Bloxsome*, 10 Jur.. N. S., 998; 33 L. J., Q. B., 209; 10 L. T., N. S., 415.

Where, at the request of the creditor, the debtor delivered a promissory note on account of the debt to third persons, as trustees for the creditor, and the debtor knew at the time that these persons were such trustees, the fact that the note is still in their hands is no answer to an action brought by the creditor for the recovery of his original debt when the note is due and unpaid. *National Savings Bank Association v. Tranah*, 36 L. J., C. P. 260; 2 L. R., C. P. 556; 15 W. R. 1015; 16 L. T., N. S. 592. In the absence of an agreement to the contrary, the acceptance of a bill of exchange only suspends the remedy for the debt. *London, Birmingham, and South Staffordshire Bank (Limited), In re*, 11 Jur., N. S., 316; 34 L. J., Chanc., 418; 12 L. T., N. S., 45—R. A bill was drawn, accepted, and payable in England, but it was indorsed by the drawer in France, the indorsement was not perfect according to French law, but was so according to English law. In an action by the indorsee against the acceptor:—*Held*, that he was entitled to recover. Quære, whether he could recover against the indorser. *Lebel v. Tucker*, 3 L. R., Q. B. 77; 37 L. J. 46; 17 L. T. 244. The holder of a foreign bill drawn in parts who loses the only part he had, cannot maintain an action against his indorser for not handing over to him the other parts. *Pinard v. Blockman*, 32 L. J., Q. B. 82; 3 B. & S. 388.

[1] Railway companies incorporated by Act, containing only usual clauses, cannot accept bills. *Bateman v. Mid. Wales Railway Company*, 35 L. J. 204. Defendant carried on a trade in the country, and employed B. as his agent in London, where the business was carried on in the name of B. & Co.:—*Held*, that whether B. was or not a partner with defendant, he had, with respect to third parties, authority to accept bills in the name of B. & Co., notwithstanding a secret agreement, by which B. was restrained from accepting bills. *Edmunds v. Bushell*, 1 L. R., Q. B. 97; 35 L. J. 20. A person who takes a bill accepted per procuration, takes it at his peril, as that form operates as express notice that the authority of the agent signing is limited. *Stagg v. Elliott*, 9 Jur., N. S., 158—C. P.; 31 L. J., C. P., 200, 12 Q. B. 373. Acceptor may be estopped by circumstances from disputing indorsements. *Ashpitel v. Bryan*, 9 Jur., N. S., 791; 32 L. J., Q. B., 91.

In an action against a colonial broker on a bill as to his authority to accept, the jury might be asked, of their own knowledge as commercial men, whether colonial brokers did business by means of bills, and whether it was not one mode by which they carried on business. *Schweitzer v. Long*, 3 F. & F. 687. A proviso in a bill drawn by a joint-stock company limiting the liability thereunder is repugnant and void. *Slate Fire Insurance, ex parte*, 32 L. J. Ch. 300.

A party taking a bill of a member of a firm accepted in its name in fraud of the partnership must show that he gave value for it. *Hogg v. Skeen*, 34 L. J., C. P. 153. When given for a separate debt the presumption is that it was given without the concurrence of the other members of the firm. *Lieverson v. Lowe*, 32 L. J., C. N. 10.

An acceptor for honour is estopped from setting up, as a defence, forgery by drawer. *Phillips v. ImThurn*, 35 L. J., C. P. 220; 14 L. J., N. S. 406; 1 L. R., J. P. 463; 18 C. B., N. S., 694. He is as much bound to admit the signature of a payee as the drawer himself is; therefore he cannot plead that the payee was a fictitious person, although he knew it not when he accepted. *Id.*

[2] A non-transferable promissory note, payable, in two instalments, or, on default in the former, at once, is within 3 & 4 Ann. c. 9, s. 1, and the maker has three days' grace: *Miller v. Biddle*, 11 Jur., N. S., 980; 13 L. T., N. S., 334—Exch.

[3] Where a bill drawn in England, payable to the drawer's order, directed to and accepted by the drawee in France, payable in France, is dishonoured, it is sufficient to prove that notice of dishonour was given to the indorser according to the law of France. *Hirschfeld v. Smith*, 1 L. R. C. P. 340; 35. L. J. 177. A bank being indorsee of a bill of exchange, a notice of dishonour, headed with the name of the bank, is sufficient, though it has no signature at the foot. *Maxwell v. Brain*, 10 Jur., N. S., 777; 10 L. T., N. S., 301—Exch. The non-payment of the bill need not be stated in express words, but suffices if it may be reasonably inferred that it was not. *Bain v. Gregory*, 14 L. T., N. S., 601. Hence a bill of exchange drawn by defendant accepted by P., payable at plaintiff's office, was indorsed by defendant to plaintiff. At the close of the day on which it fell due, plaintiff wrote to defendant: "Yours and P.'s note of hand is now due, and your attention to same will oblige:"—*Held*, this was a sufficient notice of dishonour. *Ib.*

[4] The rule of law as to the time within which notice of dishonour must be given to an indorser does not allow of a day's delay for the agent of the holder to communicate

XI. Foreign Bills, and Foreign Law relating to them.[1]

XII. Of Destroyed Bills and Notes, Altering and Forging of.[2]

XIII. Merging and Cancellation of.[3]

XIV. Action on Bill or Note.

(A) *Pleadings.*[4]

with the holder; therefore, where the bill was dishonoured in London on the 14th, and the holder's agent communicating with the holder at Liverpool, the notice was not received by the indorser at Leeds until the 17th:—*Held*, the notice was not in time. *In re Leeds Banking Co.; Exparte Prange*, 1 L. R. Eq. 1.

Due notice is such notice as can be reasonably required according to the law of the place where the bill is payable. *Hirschfeld v. Smith*, 1 L. R. C. P. 340; 1 H. & R. 284; 35 L. J. C. P. 177.

A promise to pay by a drawer of a bill after its maturity, is evidence either of due notice of dishonour having being given or of a waiver of notice; and, if necessary, in such case the court will amend the pleadings. *Cordery v. Colvin*, 14 C. B. N. S. 374; 9 Jur. N. S. 1200; 32 L. J. C. P. 210; 8 L. T. N. S. 245. Therefore, when an indorser of an overdue bill, who had not notice of dishonour, on being told that the holders were about to take proceedings against him on the bill, and being asked what he was going to do about it, said that he would pay it if they would give him time:—*Held*, evidence of a waiver of notice. *Woods v. Dean*, 3 B. & S. 101; 7 L. T. N. S. 561.

A subsequent unconditional promise to pay will sustain an allegation of actual presentment and notice of dishonour. *Killby v. Rochussen*, 18 C. B. N. S. 357; *Roby v. Gilbert*, 30 L. J. Ex. 170; 6 H. & N. 536. *Woods v. Deans*, 32 L. J. Q. B.; 3 B. & S. 101.

[1] An indorsee of a foreign bill, drawn in sets, cannot maintain an action for the other sets against an intermediate indorser who has them not. *Pinard v. Klockmann*, 3 B. & S. 388: 9 Jur. N. S. 599; 32 L. J. Q. B. 82; 7 L. T. N. S. 625.

A defendant, a British subject, residing at Florence, there signed two notes and sent them to London, where they were delivered to the payee:—*Held*, that the "cause of action" arose upon the delivery of the notes, and the defendant could be sued upon them. *Chapman v. Cottrell*, 3 H. & C. 865. But where a merchant resident in Norway, and not a British subject, drew in N. his bill on E. in this country, and after indorsing it to the order of D., sent it by post to D. in London, who indorsed it the plaintiff in London:—*Held*, that there was not a cause of action which arose in this country, nor a breach of contract made within it. *Sichel v. Borch*, 33 L. J. Ex. 179.

[2] A vested right of action in the holder against the acceptor of a bill, can in general only be extinguished by a release, or by an accord and satisfaction as between them. But, if the bill is an accommodation bill, and the holder has notice of that fact when he receives it, payment by the drawer is a complete discharge. *Cook v. Lister*, 13 C. B. N. S. 543; 32 L. J. C. P. 121; 7 L. T. N. S. 712.

It appeared that the rate of exchange was added both to the indorsement and the body of the bill after it was issued:—*Held*, the alteration was material, and avoided the bill. *Hirschfeld v. Smith*, 1 L. R. C. P. 340; 35 L. J. 177; 1 H. & R. 284. *See Bank of Hindostan v. Smith*, 34 L. J. C. P. 241.

A bill purporting to be drawn by C. and Co. on S. and to be payable to R. S. refused to accept it, the defendant thereupon accepted it for the honour of the drawers, and it was indorsed in the name of R. to the plaintiff, who discounted it. The bill was a forgery, and R., the pretended payee, was a ficitious person:—*Held*, that the plaintiff was entitled to recover from the defendant the amount of the bill. *Phillips v. Im Thurn*, 1 L. R. C. P. 463; 35 L. J. C. P. 220; 14 L. T. N. S. 406.

Adding to a note the words "on demand" will not vitiate it. *Albras v. Cornwell*, 3 L. J. N. C. 194.

[3] A bill or note is not merged by taking a deed as a collateral security unless the securities are co-extensive. *Boaler v. Mayor*, 12 L. C. N. S. 457, C. P. but it is a good plea that a bill or note was to be given up to be cancelled on the execution of a mortgage. *Bailey v. Edwards*, 34 L. J. Q. B. 41.

[4] It is not necessary in an action against the drawer of a bill for non-acceptance to aver the delivery of the bill to the plaintiff. *Devereux v. Morrissey*, 17 Ir. C. L. R. 785, C. P.

The defendants signed a note as a security for a loan from a club of which they were members. By the rules certain payments were made at every monthly meeting for particular purposes:—*Held*, that the defendants, who signed as sureties for the other defendant, had no right to set off these monthly payments by the principal, as made on account of the sum secured by the note. *Wright v. Hickling*, 15 L. T. N. S. 245, C. P.

Action on joint and several promissory note. Plea that the defendant was only a surety for A., the other maker, and that at the time of making, plaintiff was informed of the fact, and agreed with defendant to demand payment from A. within three years, which he had not done, and A. had

(B) *Evidence.*[1]

(C) *Damages, Interest and Expenses.*[2]

(D) *Costs.*[3]

(E) *Execution.*[4]

XV. Summary Procedure.[5]

BILL of Lading. 2 Abr. 490. *See* Abbott on Shipping by Shee, 18 & 19 Vic. c. 111; Charter party; Freight; Ship and Shipping; Stoppage *in transitu.*

I. Nature and General Effect of, and Stamp on, p. 77.

(A) *Authority and Liability of Master*, p. 78.

(B) *The Rights under, when vest in Consignee or Indorsee*, p. 78.

(C) *Construction of*, p. 78.

(D) *Right to Sue*, p. 78.

I. Nature and General Effect of, and Stamp on.[6]

become insolvent:—*Held*, a good defence. *Lawrence v. Walmsley*, 12 C. B. N. S; *Pooley v. Harradine*, 7 Ell. & Bl. 431. To an action by a company for money lent, defendant pleaded the delivery by him on account of the claim at the request of plaintiffs, A. and B., of a note payable to A. B., or order, and that A. and B. still held it. Replication on equitable grounds that A. and B. were, to the knowledge of defendants, trustees for the plaintiffs, and that the note was still due and unpaid:—*Held*, plaintiffs were entitled to recover. *National Savings Bank v. Tranah*, L. R. 2 C. P. 556; 36 L. J. 260. The holder of a bill having sued the acceptor upon it at maturity, during the pendency of the action, and transferred it without consideration, and with notice of the pendency of the former action, and thereupon the transferee brought an action upon the bill against the acceptor:—*Held*, that the pendency of the first action was not the subject of a plea in bar to the second, but matter only for an application for interference of the court. *Deuters v. Townsend*, 10 Jur. N. S. 1072; 33 L. J. Q. B. 301; 5 B & S. 613.

[1] An acknowledgment by one of several drawers of a joint and several promissory note, does not (since the 19 & 20 Vict. c. 97, s. 14) take it out of the statute as against the others. *Cockrill v. Sparke*, 9 Jur. N. S. 307; 7 L. T. N. S. 752, Ex.

A plaintiff having, without inquiry, and at a heavy discount, taken a bill drawn by a partner in fraud of the firm, from a person who had taken it from the fraudulent drawer with a knowledge of the fraud, the bill having upon it a name which made it perfectly good:—*Held*, that these facts were evidence on which the jury might presume that the plaintiff took the bill malâ fide. *Dailey v. De Fries*, 11 W. R. 376, Q. B.

[2] A fixed law at a foreign place of drawing, as to damages and interest for non-payment of a bill, binds the drawer as part of his contract. *State Insurance Company, In re*, 9 Jur. N. S. 298; 32 L. J. Ch. 300.

Interest is not allowable on the promissory notes of a banking company where the notes are payable on demand, and no demand for payment has been made before the company is ordered to be wound up. *Staffordshire Banking Company, in re*, 4 L. R. Eq. 50; 36 L. J. Ch. 806, R.

[3] By the 18 & 19 Vict. c. 67, if the plaintiff has a verdict for an amount not more than 50*l.*, and the action be one for which the plaint might have been entered in the London Small Debts Court, he will not be entitled to his costs. *Harris v. Swinburn*, 10 Jur. N. S. 1234; 33 L. J. Q. B. 313; 12 W. R. 978. Nor can a plaintiff suing in a superior court instead of the sheriff's court, on a lost bank-note for less than 20*l.*, recover his costs. *Noble v. Bank of England*, 9 Jur. N. S. 778; 8 L. T. N. S. 733, Ex.

[4] Taking acceptor in execution by holders does not necessarily affect rights of third parties. *Woodward v. Pell*, 3 L. J. N. 269.

[5] To induce the judge to grant leave to the defendant, in an action on a bill of exchange, to appear and defend, it is only necessary that defendant's affidavit should show a probable ground of defence; and unless that ground of defence be displaced by plaintiff, the defendant will not be ordered to bring the money into court or give security. *Agra & Masterman's Bank v. Leighton*, L. R. 2 Ex. 56; 36 L. J. 33; *Feebart v. Sterem*, 30 L. J. Ex.

[6] A bill of lading remains in force until

(A) *Authority and Liability of Master.*[1]

(B) *The Rights under, when vested in Consignee or Indorsee.*[2]

(C) *Construction of.*[3]

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there has been a complete delivery of the goods thereunder to a person having a right to receive them. *Meyerstein v. Barber*, 2 L. R. C. P. 661; 36 J. L. C. P. 289; 15 W. R. 998; 16 L. T. N. S. 569.

Connaissement means a bill of lading, not merely a receipt for the goods. *Stearine Company v. Heintzmann*, 17 C. B. N. S. 56; 10 Jur. N. S. 881; 11 L. T. N. S. 272.

Three parts of a bill of lading (by which the goods were deliverable at G. to the purchaser or assigns) were handed to the vendor, and the fourth part retained by the master:—*Held*, that the delivery on board was not delivery to the purchaser so as to preclude stoppage *in transitu* before the delivery of the goods at G. *Schotsmans v. Lancashire and Yorkshire Railway Company*, 1 L. R. Eq. 349; 35 L. J. Ch. 100; 13 L. T. N. S. 733, R. *See* 4 L. R. C. 493.

The 18 & 19 Vict. c. 111, s. 3, only applies to persons who have actually signed bills of lading; therefore the owners of a ship are not estopped from showing that a statement of weight contained in a bill of lading of goods shipped, signed by the ship's agent, is incorrect. *Jessel v. Bath*, 36 L. J. Ex. 149; 2 L. R. Ex. 267.

[1] The master of a ship has no power, under his general authority, to draw bills of lading, making the freight payable to other than his owner. *Reynolds v. Jex*, 34 L. J. Q. B. 251; 7 B. & S. 86. If bills of lading are presented to the master by two different holders, and he delivers to one, no right of action against him accrues thereby to the disappointed holder, as it is not for the master to inquire who has the best right. *The Tigress*, 9 Jur. N. S. 361; 32 L. J. Adm. 97; 8 L. T. N. S. 117; see 31 L. J. Q. B. 191; 2 B. & S. 174. The master of a ship having been sued to judgment on a bill of lading, the owner cannot be sued, although the judgment be unsatisfied. *Priestly v. Fernie*, 11 Jur. N. S. 813; 34 L. J. Ex. 173; 13 L. T. N. S. 208. The owner and master of a ship stand on the same ground as any other principal and agent in respect to this question. (Ib.)

A bill of lading does not become exhausted or inoperative, as the symbol of property, so long as there has been no actual delivery of the goods. *Meyerstein v. Barber*, Ex. 2 L. R. C. P. 661; 36 L. J. 289; *Cawthron v. Trickett*, 15 C. B. N. S. 754; 33 L. J. C. P. 182: 12 W. R. 311; 9 L. T. N. S. 609.

A consignee of goods under a bill of lading has no right to deduct from the freight payable on delivery of goods the value of articles which, though mentioned in the bill of lading, turn out not to have been put on board. *Meyer v. Dresser*, 16 C. B. N. S. 646; 33 L. J. C. P. 289; 10 L. T. N. S. 612.

[2] A bill of lading is not, like a bill or note, a negotiable instrument which passes by mere delivery to a bonâ fide transferee for value without regard to the title of the transferors. *The Marie Joseph*, 12 L. T. N. S. 236, Adm. The indorsement and delivery of one of a triplicate set of bills of lading does not necessarily operate as an indorsement of all. *The Tigress*, 9 Jur. N. S. 361; 32 L. J. Adm. 97; 8 L. T. N. S. 117. But the fact of a bill of lading being indorsed by the consignee to a man of business and handed over to him, and his indorsing for value and handing the bill of lading to the plaintiff, is sufficient evidence to go to the jury that the property has passed to the plaintiff. *Dracachi v. Anglo-Egyptian Navigation Company*, 3 L. R. C. P. 190; 37 L. J. 71. *See* 3 L. J. N. 80.

Where, from all the facts, it may fairly be inferred that it was the intention of the seller to pass the property in goods shipped to order, the mere circumstance of the bill of lading being taken in the name of the seller, and remaining unindorsed, will not prevent it passing. *Joyce v. Swann*, 17 C. B. N. S. 84; see *Meyerstein v. Barber*, 36 L. J. C. P. 289; *Lewis v. M'Kee*, 2 L. R. C. P. 37; 36 L. J. Ex. 6; 15 L. T. N. S. 388.

A. ordered a cargo of timber of B. at Memel, with directions to charter a ship to bring it to L. B. accordingly chartered a ship, and sent the bill of lading indorsed to A., with a draft for the invoice price, which A. accepted and paid. Semble, that A. was a consignee or indorsee for value within the 18 & 19 Vict. c. 111, s. 3. *Meyer v. Dresser*, 16 C. B. N. S. 646; 33 L. J. C. P. 289.

[3] A bill of lading does not become exhausted or inoperative as the symbol of property so long as there has been no actual delivery of the goods. *Meyerstein v. Barber*, 2 L. R. C. P. 38.

The chief mate of a ship gave to the person who put the goods on board, a receipt by mistake for more than the proper quantity; this person, who was not the shipper, knowing of the mistake, procured the captain to sign a bill of lading on the faith of the mate's receipt:—*Held*, that the captain was exonerated; the misrepresentation being caused "wholly by the fraud of the shipper." *Valieri v. Boyland*, 1 L. R. C. P. 382; 35 L. J. 215; *see Bradley v. Dunipace*, 1 H. & C. 521, Ex. Ch.

An exception of "the king's enemies" means the enemies of the sovereign of the person who made the bill of lading. *Russell v. Niemann*, 17 C. B. N. S. 163; 34 L. J. C. P. 10; 10 L. T. N. S. 786.

A ship lost at sea, "by running foul of and striking against another vessel, through the negligence of the shipowners, by their marines, and not otherwise," was held not

(D) *Right to Sue.*[1]

BILL of Sale. 2 Abr. 294. *See* 17 & 18 Vic. 56; 29 & 30 Vic. c. 96; Millar and Collier on Bills of Sale.

to be "accidents or damages of the sea," so as to exonerate the shipowners or carriers. *Lloyd v. General Iron Screw Collier Company*, 10 Jur. N. S. 661; 32 L. J. Ex. 269: 12. W. R. 882: 10 T. L. N. S. 586.

Where part of the goods comprised in a bill of lading are unshipped before the owner or consignee is ready, and offers to take delivery, but is ready and demands delivery of the residue under circumstances which do not entail loss or damage on the shipowner, the owner, it seems, is entitled to delivery of the part not then landed. *Wilson v. London, Italian, and Adriatic Steam Navigation Co.* 1 L. R. C. P. 61; 35 L. J. 9.

The 17 & 18 Vic. c. 104, was not intended to alter the relation between shipowners and shippers, and does not render a breach of the rules barratry, unless it was intentional. *Grill v. General Iron Screw Collier Company*, 1 L. R. C. P. 600; 12 Jur. N. S. 727; 35 L. J. C. P. 321.

In a bill of lading where the freight is made payable "as per charter party," incorporates into the bill of lading all the clauses in the charter party which relates to the amount of the freight. *The Norway*, 2 B. & L. 226.

In an action by a shipper of goods against the shipowner for loss of goods casued by the ship sinking in consequence of collision which occurred through the negligence of the crew:—*Held*, that although the sinking of the ship was a "peril of the sea," yet as that was a consequence of not carrying with reasonable care, the loss was not "an accident or damage of the seas," within the accepted risk of the bill of lading. *Grill v. General Iron Screw Collier Company*, 1 L. R. C. P. 600; 35 L. J. 321.

In a bill of lading for casks of oil there was in the margin "not accountable for leakage:"—*Held*, this amounted to an exemption of the shipowner from liability for leakage to any amount, unless caused by negligence. *Orloff v. Briscall*, 1 L. R. C. P. 231; 35 L. J. 63. But where under a bill of lading in usual form, the cargo was much damaged by rats, but all possible precautions had been taken to banish them:—*Held*, this was not a danger excepted, and the shipowner was liable. *Kay v. Wheeler*, 36 L. J. C. P. 180; 2 L. R. C. P. 302; 16 L. T. N. S. 66, Ex. Ch. *Czech v. General Steam Navigation Company*, 3 L. R. C. P. 14; 37 L. J. C. P. 3; 17 L. T. N. S. 246.

An exception in a bill of lading of "accidents or damages of the seas, rivers, and steam navigation, of whatever nature or kind soever," does not exempt a shipowner from responsibility for loss of goods by reason of a collison caused by the gross negligence of the master or crew. *Lloyd v. General Iron Screw Collier Company*, 3 H. & C. 284; 33 L. J. Ex. 269.

[1] Re-indorsee of a bill of lading is remitted to his original rights under the contract, and may sue for breach. *Short v. Simpson*, 1 L. R. C. P. 248; 35 L. J. C. P. 147. *Czech v. General Steam Navigation Co.* 37 L. J. 3 C. P.

The 18 & 19 Vic. c. 111, s. 3, does not make a bill of lading conclusive evidence against the owner that the goods were put on board. *Meyer v. Dresser*, 16 C. B. N. S. 646; 33 L. J. C. P. 289; 10 L. T. N. S. 612. The act operates where a bill of lading is signed by the master, who is part-owner, and who sues on behalf of himself and his co owners. Ib. See *Jessell v. Bath*, 2 L. R Ex. 267; 36 L. J. 149. *Valieri v. Boyland* 1 L. R. C. P. 382; 12 Jur. N. S. 566; 35 L. J. C. P. 215; 14 L. T. N. S. 362.

An indorsement by consignee substituting liability for freight, accepted by M., precludes him from suing for the freight. *Lewis v. M'Kee*, 36 L. J. Ex. 6; 2 L. R. Ex. 37.

To an action by a shipowner against consignees of goods for freight, the defendants pleaded that the charter-party plaintiff was to deliver the goods on being paid freight by the receivers of the cargo, that before arrival defendants indorsed the bill of lading in these words: "Deliver to Messrs. W. & K. or order, looking to them for all freight, &c., without recourse to us." That plaintiff accepted the indorsement and delivered the cargo W. & K., and not to defendants' wharf-fingers, and that the indorsement was only intended to make them receivers:—*Held*, the plea was a good defence. *Lewis v. M'Kee*, 2 L. R. Ex. 37.

A. bought coal of B. to be shipped in a ship chartered by A., payment in cash against bill of lading in the hands of B.'s agent. Before shipment A. sold to C., and at the time of both sales the coal was unascertained. The coal was shipped, and three bills of lading signed for delivery to A. on order; one only was stamped and retained by B., another was sent to A. Not being paid, B. sent the stamped bill of lading to D., and the captain delivered the coal to him:—*Held*, that C. had no right of action against D. *Moakes v. Nicholson*, 19 C. B. N. S. 290; 34 L. J. C. P. 273. *Meyerstein v. Barber*, 36 L. J. C. P. 48.

A bill of lading by which the goods are made deliverable to "order and assigns" is a negotiable instrument, and by indorsement and delivery the property in the goods pass to the indorsee, subject only to the right of an unpaid vendor to stop *in transitu;* and if the indorsee indorse the bill of lading to a purchaser for value and without notice of any fraud, the vendor's right of stoppage *in*

I. Its Nature, Construction, and Effect, p. 80.
II. Registration of Bill of Sale, and Affidavit of Execution, p. 80.
III. In Case of Bankruptcy. Execution, &c., p. 82.

I. Its, Nature, Construction, and Effect.[1]

transitu is gone. *Gurney v. Behrend*, 3 E. & B. 534. *Pease v. Gloahee*, L. R. 1 P. C. 219; 35 L. J. 66.

[1] In equity it is not necessary for the alienation of existing property that there should be a formal deed of conveyance. A contract to transfer for valuable consideration passes it at once, and the vendor becomes a trustee for the vendee. *Holroyd v. Marshall*, 10 H. L. Cas. 191; 33 L. J. Ch. 193. But it must be an instrument by which the property is intended to pass. *Allsop v. Davy*, 31 L. J. Ex. 105.

A trading company may give a bill of sale of its effects in respect of goods supplied for the purposes of trade. *Shean v. Jacobs*, 1 H. & R. 492; 1 L. R. C. P. 513; 35 L. J. C. P. 241. *Deffield v. White*, 2 L. R. C. P. 144. Directors' attesting seal are not attesting witnesses within the act. *Deffield v. White*, 12 Jur. N. S. 902; 36 L. J. C. P. 25; 15 L. T. N. S. 211.

No attestation is necessary to the validity of a bill of sale. *Deffield v. Miles*, 15 L. T. N. S. 293.

Describing a shipbroker in a bill of sale as a broker suffices. *Guyen v. Sampson*, 42 J. L. C. P. 74.

Where money is secured to be paid by instalments if the time be enlarged, there is no default, and a seizure and sale within the enlarged time is illegal. *Meyal-Albert v. Grovesnor Investment Co.* 57 L. J. Q. B. 24. *Maughan v. Sharpe*, 10 Jur. N. S. 989; 34 L. J. C. P. 19; 13 L. T. N. S. 870; 17 C. B 443.

Where a debt is secured by a bill of sale and a bill of exchange, the fact that the latter is outstanding does not suspend the right of a creditor to seize under the former. *Bramwell v. Eglington*, 10 Jur. N. S. 583; 33 L. J. Q. B. 130; 10 L. T. N. S. 295.

Under the 17 & 18 Vic. c. 36, ss. 2 and 3, it is not necessary that the vendee should state on the bill of sale the name of the person who really advances the money, unless there is some trust in favour of the vendor, although the circumstances are such that a court of equity would hold the vendee to be a trustee only. *Robinson v. Collingwood*, 34 L. J. C. P. 18; 17 C. B. 777.

A bill of sale recited that B. was indebted to A. 50*l.* for goods supplied, and that therefore B. assigned to A. "all the household goods, furniture, stock-in-trade, goods and chattels, at the Black Bull, and all other his personal estate whatsoever to which he was entitled." B. surrendered the remainder of his term in the Black Bull to his landlord. In an action for breaking and entering A.'s house and land, and converting his goods therein:—*Held*, that the bill of sale operated only to pass the chattels personal, and not the term of years. *Harrison v. Blackburn*, 10 Jur. N. S. 1131; 11 L. T. N. S. 453, C. B. 17 C. B. 678. And that in any event, as there had been no actual entry, an action of trespass could not be maintained. *Ib.*

The possession or apparent possession of a vendor or mortgagor, under the 17 & 18 Vic. c. 36, is a general question of fact. *Gough v. Everard*, 2 H. & C. 1.

Looms brought into a cotton-mill by the lessee, for the purpose of his business, and fastened to wooden pegs let into a flagged floor, by means of a nail driven through the legs of the looms, were assigned by the lessee along with the mill, &c., to a mortgagee, but such assignment was not registered as a bill of sale:—*Held*, against the assignees in bankruptcy of the assignor, that the looms were fixtures, and that the assignment was good without registration. *Boyd v. Shorrock*, 5 L. R. Eq. 72; 17 L. T. 197; 16 W. R. 102.

B., in consideration of money advanced by M., gave a bill of sale of all his effects to R., who was M.'s solicitor. The trust in favour of M. did not appear on the face of the bill of sale itself, or on the copy filed:—*Held*, that the bill of sale was, nevertheless, good as against an execution creditor. *Robinson v. Collingwood*, 10 Jur. N. S. 1080; 34 L. J. C. P. 313.

It is question for a jury whether fraudulent not one of law mere possession is not *per se* a badge of fraud. *Macdonna v. Sweny*, 8 Rep. 73. *See Durvile v. Terry*, 30 L. J. Ex. 365; 6 H & N. 807. *Gough v. Everard*, 32 L. J. Ex. 210.

A description of the attesting witness sufficient to enable a stranger to find him out without unreasonable trouble suffices. *Briggs v. Ross*, 37 L. J. Q. B. 101.

The giving a bill of sale, which necessarily defeats and delays creditors, is an act of Bankruptcy. *Woodhouse v. Murray*, 3 L. J. N. 267, Exch.

The 24 & 25 Vic. c. 91, s. 34, which enacts that "no copy of any bill of sale of personal chattels shall be filed in any court, unless the original shall be produced to the proper officer with whom the copy is to be filed, duly stamped," does not prevent a bill of sale from being given in evidence, though not duly stamped at the time of filing the copy, if the deficiency of duty and the penalty be paid. *Bellamy v. Saull*, 4 B. & S. 265; 32 L. J. Q. B. 366.

II. Registration and Affidavit required.[1]

Bills of sale of future-acquired property are not excluded from the provisions of the 17 & 18 Vic. c. 36. *Holroyd v. Marshall*, 33 L. J. 193, Ch. 10 H. L. 191; 7 L. T. N. S. 172, H. L. *Masters v. Whitmore*, 32 L. J. Ch. 63. And they give merely an equitable right, which can only be enforced by taking possession after a demand. *Belding v. Read*, 11 Jur. N. S. 547; 34 L. J. Exch. 212. *See Holroyd v. Marshall*, 10 H. L. C. 191; 33 L. J. Ch. 193. *Cooper v. Tatham*, 15 L. T. 218.

By a bill of sale the grantor covenanted to pay the bill secured immediately upon demand in writing, signed by or on behalf of the grantees, being given to him or left at his last-known place abode; and if he did not "immediately upon such demand" pay the money, the grantees were authorised to enter and seize the goods comprised in the bill of sale; and until default in payment on such written demand the grantor was to remain in possession of them. A written demand, signed by their attorneys on behalf of the grantees, "we hereby demand of you the immediate payment of," &c., was given by the attorneys to the sheriff's officer, who was authorised to receive the money; but he simply handed the document to the grantor, and then seized the goods:—*Held*, that the grantor was entitled to a reasonable time to get the money, and see the grantees, or some one whom he knew to be authorised to receive it. *Toms v. Wilson*, 9 Jur. N. S. 492; 32 L. J. Q. B. 33. Affirmed on appeal, 32 L. J. Q. B. 382; 8 L. T. N. S. 798; 10 Jur. N. S. 207. In such a case the measure of damages is not the value of the goods taken, but the value of A.'s interest in them at the time of seizure. (*Ib.*) *Brightly v. Norton*, 3 B. & S. 305; 9 Jur. N. S. 495; 32 L. J. Q. B. 38.

[1] By 29 & 30 Vic. c. 96, s. 3, the filing of a bill of sale, or a copy thereof, with the officer required by the 17 & 18 Vic. c. 36, will be the registration. By ss. 4 & 5 the registration under 17 & 18 Vic. c. 36, shall cease to have any effect, unless renewed in every five years, by filing in the office of the master of the Q. B. an affidavit stating the bill of sale, with names, residences, and occupations of the respective parties thereto, and the date of such bill of sale, and that it is a subsisting security; s. 6, affidavit to be on 5*s.* stamp; s. 7, Master of Q. B. to keep a book containing particulars of such bill of sale, and affidavit books may be searched on payment of 1*s.* and office-copies of affidavit to be supplied. When there are two bills of sale of the same property, the one first registered is entitled to priority. *Richards v. Jones*, 36 L. J. Q. B. 116.

The assignee in a bill of sale has twenty-one days from its date within which either to take the goods out of the assignor's possession or to protect his own title to them by filing the bill of sale; and during the twenty-one days he cannot be deprived of his rights to the goods by their seizure by the sheriff. *Marples v. Hartley*, 3 Ell. & Ell. 610.

An assignment for the benefit of the creditors is within the exception in the 7th section of the 17 & 18 Vic. c. 36, and therefore exempt from registration. *General Furnishing and Upholstery Company v. Venn*, 2 H. & C. 153.

Where goods are taken in execution within the twenty-one days allowed by 17 & 18 Vic. c. 36, s. 1, for filing a bill of sale, it is not void as against the persons in the act mentioned, although the holder of a bill of sale, intending to comply with the provisions of the act, has filed documents not in conformity with it. *Banbury v. White*, 2 H. & C. 300; 33 L. J. Ex. 258.

It is no objection to the affidavit required by s. 1 of the 17 & 18 Vic. c. 36, that it is entitled in the Queen's Bench, and stated to be sworn before a commissioner of the Exchequer, if the commissioner is a commissioner of the Queen's Bench; the test being whether the party swearing could be convicted of perjury under it. *Cheny v. Courtois*, 13 C. B. N. S. 634; 9 Jur. N. S. 1057; 32 L. J. C. P. 116; 7 L. T. N. S. 680.

A bill of sale, and affidavit annexed thereto, described the attesting witness as "W. J. Miller, 21 Remmington Street, Islington, in the county of Middlesex, now in no occupation." The witness had been in the militia, but at the time of the execution of the bill of sale had no occupation:—*Held*, a sufficient description of the witness to satisfy the statute. *Trousdale v. Sheppard*, 14 Ir. Com. Law. Rep. 370, Q. B. *See Roe v. Bradshaw*, 25 L. J. Ex. 77. It suffices if the affidavit filed with the bill of sale refers to the description of the residence and occupation of the attesting witness mentioned in the bill of sale. *Banbury v. White*, 2 H. & C. 300. And fits the party at the time of giving the security, and not at the time of filing it. *London and Westminster Loan Company v. Chase* or *Chace*, 12 C. B. N. S. 730; 9 Jur. N. S. 412. Hence an uncertified bankrupt, following no occupation at the time of granting a bill of sale, may properly be described in the affidavit as a "a gentleman," although at the time of filing the affidavit he carries on the business of a commission agent. (*Id.*)

So one who, up to and at the time of the execution of a bill of sale, has never been actually engaged in any trade or occupation, is properly described "a gentleman." *Gray v. Jones*, 14 C. B. N. S. 743. *Hewer v. Cox*, E. & E. 428.

An attesting witness to a bill of sale was, in the attestation, truly described as an attorney. The affidavit filed with the bill of sale was made by the attesting witness, who there described himself as "a gentleman," "and I further say that my residence and occupation hereinbefore set forth is the true

III. In Case of Bankruptcy and Executions.[1]

BILL-STICKERS. Stat. relating to 25 & 26 Vic. c. 102.

BIRTH, Entry,[2] and Registration of.[3]

BIRTHS, concealing. Stat. 24 & 25 Vic. 100, s. 60.

BLASPHEMY.[4]

BLEACHING and Dyeing Acts, Regulating. 23 & 24 Vic. c. 78; 26 & 27 id. c. 38; 27 & 28 id. c. 98; 28 & 29 id. c. 38.[5]

description of my residence and occupation." *Semble*, sufficient, as the affidavit in other parts showed the witness's occupation by reference to the bill of sale. *Banbury v. White*, 9 Jur. N. S. 913; 32 L. J. Ex. 258; 8 L. T. N. S. 508. *Adams v. Graham*, 33 L. J. 2 B. 71.

A. having executed a bill of sale to G., to which, at the time of execution, a schedule of the furniture conveyed, written on loose sheets of a book, was fastened subsequently, and before registration that schedule was disannexed and a copy made of it, and that copy was appended to the original bill of sale. In that condition a copy of the original bill of sale, and of the copy of the original schedule so appended, was registered:—*Held*, that a true copy of the original bill of sale and schedule had been registered within 17 & 18 Vic. c. 36. *Green v. Attenborough*, 13 W. R. 185; 11 L. T. N. S. 513, Ex. Ch.

A description of the attesting witness sufficient to enable a stranger to make reasonable inquiries suffices. *Briggs v. Bass*, 3 L. R. Q. B. 268; 37 L. J. Q. B. 101.

The affidavit of the residence and occupation of the person giving the bill of sale contained the name of the *company* and the chief place of business:—*Held*, the affidavit was sufficient. There were opposite to the seal of the company the names of two of the directors, and underneath them the name of the secretary, who swore to the sealing of the bill of sale:—*Held*, the directors' signatures being considered not as attesting witnesses, but merely to authenticate the seal, that it was unnecessary to state in the affidavit the residence and occupation of the two directors. *Shears v. Jacob*, 1 L. R. C. P. 513; 35 L. J. 241.

The affidavit accompanying a bill of sale gave the true description of the residence and occupation of the grantor, adding, "to the best of the belief of deponent:"—*Held*, the affidavit was a compliance with the section. *Roe v. Bradshaw*, 1 L. R. Ex. 106; 4 H. & C. 178. See *Hewer v. Cox*, 3 Exc. 478.

The residence and occupation of a party signing a bill of sale not being a witness, but only a party executing the document, need not be given in the affidavit. *Beffell v. White*, 36 L. J. C. P. 25.

[1] The assignee of goods assigned under a bill of sale has twenty-one days from the date of the bill of sale within which he may either file the bill of sale, or take the goods out of the apparent possession of the assignor. *Marples v. Hartley*, 3 El. & El. 610.

An execution having been levied on goods within twenty-one days after the making of a bill of sale thereof:—*Held*, that a defective affidavit filed therewith did not vitiate the bill of sale. *Banbury v. White*, 9 Jur. N. S. 913, Ex.

A claimant under a registered bill of sale has a priority over a claimant under an unregistered bill of sale previously executed, in respect of goods seized under an execution which is barred by the registered bill of sale. *Richards v. James*, 16 L. T. N. S. 174; 36 L. S. Q. B. 116; 2 L. R. 285.

A creditor, at the request of his debtor, but without moral fraud or collusion to evade the bankruptcy laws, consented to an arrangement whereby the sheriff, who was in possession, was to go out without selling, and he was to assign the whole of his property to the creditor:—*Held*, that this assignment was an act of bankruptcy as being a fraudulent conveyance within 24 & 25 Vic. c. 134, s. 73. *Woodhouse v. Murray*, 15 W. R. 1109; 16 L. T. N. S. 559; 36 L. J. Q. B. 289. *Mercer v. Peterson*, 2 L. R. Ex. 304; 36 L. J. Ex. 218; 15 W. R. 1174; 16 L. T. N. S. 792. *Topping v. Keysell*, 16 C. B. N. S. 258; 10 Jur. N. S. 774; 33 L. J. C. P. 225; 12 W. R. 756; 10 L. T. N. S. 526.

[2] The entry in a family Bible of the births of children, made by their mother shortly after such births, is good evidence, in the absence of other and better testimony. *Ashcroft v. Powell*, 9 L. T. N. S. 638, Ch.

[3] Under 6 & 7 Wm. 4, c. 86, s. 7, the clerk to the board of guardians created under 4 & 5 Wm. 4, c. 76, has no right to be superintendent registrar except in the case of the first appointment, and on any subsequent vacancy the power of appointment is in the board of guardians. *Reg. v. Acason*, 2 B. & S. 795; 31 L. J. Q. B. 227.

[4] The delivery of lectures designed to show that the character of Christ is defective and his teaching misleading, and that the Bible is no more inspired than any other book, is illegal. *Cowan v. Milbourn*, 36 L. J. Ex. 124; 2 L. R. Ex. 230; 16 L. T. N. S. 290; 15 W. R. 750.

[5] The exception in 23 & 24 Vic. c. 78, s. 3, is not confined to a building which, by local proximity, forms part of the establishment where the chief process is carried on. *Hoyle v. Oram*, 31 L. J. M. C. 213. The process of finishing is not within the Act, unless it be carried on as incidental to the operations

BLOCKADE.[1]

BOARD of Works.[2] *See* 18 & 19 Vic. c. 120, s. 105; 25 & 26 Vic. c. 102, s. 77.

BOND. 2 Abr. 504. *See* also Principal and Surety.

I. Construction of.
II. When Legal, and Liability of Obligor.
III. Performance of Condition.
IV. Statute of Limitations.

I. Construction of.[3]
II. When Legal, and Liability of Obligor.[4]
III. Performance of Condition.[5]

of bleaching or dyeing. *Howarth v. Coles*, 31 L. J. M. C. 262; 12 C. B. 139.

[1] The carrying on trade with a blockaded port is not a breach of municipal law; nor illegal. *The Helen*, 35 L. J. Ad. 2.

[2] Although a district board of works may lawfully pass a resolution for the paving of a portion of a new street, and enforce the expenses against the owners abutting on that part; yet, where they resolve that the whole street is to be paved, they cannot afterwards pave it in sections, and make separate apportionments of the expenses of each section, and recover against the owners abutting on such section. Order for payment in such a case quashed. *Whitchurch v. Fulham Board of Works*, 1 L. R. Q. B. 233.

A notice signed by the agent of the solicitor of the board is a valid notice. *Balls v. Metropolitan Board of Works*, Q. B.; 35 L. J. 101.

[3] Where by the condition of a bond, the obligor was to pay the money by monthly instalments, and "when and as often as he should make default in the payment he should pay to the obligees 1*s.* in the pound for each and every pound of the said instalment so left unpaid," the obligees are not entitled to anything in respect of fractional parts of a pound. *Three Towns Society v. Doyle*, 13 C. B., N. S., 290.

[4] In an action on a bond, that the surrounding circumstances at the time the defendant entered into it ought to be taken into consideration, and his liability regulated by them. 32 L. J.; *Montefiore v. Lloyd*, 9 Jur. N. S., 1245; 33 L. J.; 9 L. T. N. S., 330—C. P.

Action on a bond conditioned for the performance by A. of his duties as a collector of the poor-rates and of the sewers-rates for a parish; the bond to continue in force if A. held either of the offices separately. Breach, that A. received money in both capacities, which he had failed to pay over. A plea, that before breach an act of parliament passed for increasing his duties as collector of sewers-rates, and under which he was also elected collector of main-drainage rates by the persons under whom he held his other appointments, is bad, on the ground that the bond is divisible, and affords no answer to the liabilities of his sureties for A.'s breaches of duty as a collector of poor-rates. *Skillett v. Fletcher*, 1 H. & R. 197; 1 L. R., C. P., 217; 12 Jur., N. S., 295; 35 L. J., C. P., 154; 14 L. T., N. S., 61; *Harrison v. Seymour*, 1 L. R., C. P., 518; 12 Jur., N. S., 924; 35 L. J., C. P., 264.

By an agreement between the plaintiff and S., the plaintiff agreed to purchase of S. the ship D., the price being a sum of money and the transfer to S. of the plaintiff's ship the Lord D. The plaintiff also agreed to lend S. 6000*l.* on mortgage of the Lord D.; and S. agreed to repair her, so as to class her eight years A 1 at Lloyd's; and also to do anything remaining to be done to the D. within two weeks after that ship's arrival in London. The defendant, as surety for S., gave his bond to the plaintiff, conditioned to be void if S. forthwith repaired the Lord D., and if S., within the two weeks mentioned, did all that remained to be done to the D. The plaintiff and S. afterwards, without the knowledge of the defendant, made another agreement, whereby the time within which the D. was to be completed was shortened, and more was to be done to her than was included in the original agreement:—*Held*, that as the bonds to the Lord D. and the D. were separate and distinct, the defendant, though released by the alteration made by the second agreement as to the D., was liable as to the Lord D. *Harrison v. Seymour*, 35 L. J. C. P. 264. *See Portsea Island Union Guardians*) *v. Whillier*, 2 El. & El. 755; 6 Jur., N. S., 887.

An obligor, without obtaining a legal release for his bond, gave a second bond, on the understanding that the first should be cancelled; on the death of the obligee, an action was brought to enforce the first bond:—*Held*, that the question was one for a court of equity, and an injunction was granted to restrain the action. *Whilmshurst v. Peerless*, 17 L. T., N. S. 313.

[5] Where the performance of the obligation has been rendered impossible by act of

IV. Statute of Limitations.[1]

BONUS.[2]

BOROUGH, English.[3]

BOTTOMRY and Respondentia.

I. Nature of Contract, and Rights under.[4]

II. Proceedings connected with.[5]

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the law, the obligation is discharged, and no action can lie against the obligors. *Brown v. London, Mayor, &c.*, 13 C. B., N. S., 828—Exch. Ch. *See* 3 L. J. N. 239.

[1] In 1833, trustees lent to the husband, at interest, some of the money settled to the separate use of the wife, on security of the joint bond of the husband and the defendant. No interest was paid, but on the 31st October, 1847, it was arranged between the trustees and the husband and wife that she should give the trustees her receipt for the interest up to that date. She afterwards from time to time gave receipts for each half-year's interest. No money ever passed. —*Held*, a payment or satisfaction of the interest, so as to take the case out of the 3 & 4 Will. 4. c. 42, s. 5. *Amos v. Smith*, 1 H. & C. 238.

[2] This has been defined a sum arising from the division of an accumulated fund, set apart from the profits of preceding years. *Hollis v. Allen*, 12 Jur., N. S., 638—Ch.; 14 W. R. 980.

[3] Devise, after a tenancy for life, of borough English lands for sale, and to divide the monies among all the testator's sons and daughters, and to the heir and heirs of them which might be deceased, share and share alike; under the gift to the heirs, the common law and not the heirs in borough English took. *Polley v. Polley*, 31 Beav. 363.

[4] The Court of Admiralty, in deciding on the validity or invalidity of a bottomry bond, will be guided by the general maritime law, and not by the *lex loci contractus*. *The Hamburg*, 9 Jur., N. S., 440; 32 L. J., Adm. 161; 11 W. R. 547; 8 L. T., N. S., 175.

It is the duty of a master, when practicable, to communicate, with the owners of the cargo before hypothecating it, more especially under circumstances when he must or ought to have known that the amount of the bond would exceed the value of the ship, freight, and cargo. *Ib.; see Daranty v. Hart*, 10 Jas. 60; 33 L. J. Adm. 10, L. S., 206.

Transactions between the owner and mortgagee of the vessel which might render the voyage illegal, cannot invalidate a bottomry bond given by the master to a *bonâ fide* lender, who has only to look to the facts, that is, in distress, that the master has no credit, and that the money is required for a necessary purpose. *The Mary Ann*, 1 L. R., Adm., 13.

A bottomry bond cannot affect a previous contract in a charter party, so as to take precedence of money advances made subsequently to the bond under the authority of the charter party. *The Salacia*, 32 L. J., Adm., 43; *Lloyd v. Giubert*, 10 Jur., N. S., 949; 33 L. J., Q. B., 241.

Where the Court of Admiralty has decreed the sale of a ship and cargo at the suit of a bottomry bondholder, whose right has not been questioned by the owner of the property, the bond must be taken to be *primâ facie* valid. *The India*, 9 Jur., N. S., 417; 32 L. J., Adm., 185; 11 W. R. 536; 9 L. T., N. S., 234.

If money is advanced upon consideration that a bottomry bond shall be given, the fact that such a bond is executed subsequently does not affect the validity of the bond, or place the advance upon the footing of personal credit. *The Laurel*, 33 L. J., Adm., 17; 9 L. T., N. S., 457.

The existence of a local law of lien for advances may be pleaded, and become material as evidence that there was such an agreement at the time of the advance. *Ib.* A claim for freight gives the master a possessory lien at common law. *Ib.; The Cargo, ex The Galam.* 33 L. J., Adm.—P. C. The lien for freight is regarded in the same light as salvage service, and consequently, as between the master and a bondholder, takes precedence of an antecedent bond. *Id.*

[5] In a contest between a bottomry bondholder and a mortgagee of the ship it is no objection to the validity of the bond that the voyage was undertaken in fraud of a contract between the owner and mortgagee, and without a certificate of the ship's registry, the bondholder being ignorant of such facts. *The Mary Ann*, 1 L. R. Adm. & Ecc. 8.

Where in a suit by bottomry bondholders against ship and cargo, the ship had been arrested, and was abandoned to plaintiffs, and the plaintiffs being desirous of paying off charges having precedence of theirs, to avoid costs, apply to the Court for leave; such charges should be specified on affidavit. *The Fair Haven*, L. R., 1 Adm. & Ecc. 67.

The master when rendered personally liable for freight is entitled to be paid out of the freight and proceeds in priority to bottomry bondholders. *The Edward Oliver*, 36 L. J., Adm. 13.

The Court granted leave to bondholders to pay prior charges, and to have a lien on the ship, cargo, and freight, in respect of

BOUGHT and Sold Notes.[1]

BOUNDARIES.[2]

BRAWLING. 2 Abr. 533. 23 & 24 Vic. c. 32.

BREAD.[3] The Acts relating to the sale of Bread are 3 Geo. 4, c. 106 (Metropolis) and 6 & 7 Wm. 4, c. 37. *See* Churchwardens.

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such payments, which were small in amount on an affidavit specifying the charges to be paid. *The Fair Haven*, 1 Law Rep. Adm. & Ecc. 67.

The Court will not, unless upon application being made to it, sanction the repayment of wages, &c., to bondholders out of the proceeds of the sale of a ship. *The Cornelia Henrietta*, 1 Law Rep. Adm. & Ecc. 51; 12 Jur. (N. S.) 396.

The general rule that a master who has bound himself as well as ship and freight for the payment of a bottomry bond is not entitled to payment of his own claims in priority, will not be acted upon where the bottomry bondholder will not be prejudiced by the master being paid before him. *The Edward Oliver*, 1 L. R. Adm. 379; 16 L. T., N. S. 575; 36 L. J., Adm. 13.

[1] Where a complete contract (through brokers) for the sale of goods is to be gathered from a written offer on the one side and a written acceptance on the other, such contract is not the less binding on the buyer because bought and sold notes are subsequently exchanged between the brokers containing terms not warranted by the authority given to the buyer's broker; at all events, in the absence of evidence of a custom in the particular trade to contract by bought and sold notes, or of a distinct understanding between the parties to that effect. *Heyworth v. Knight*, 17 C. B., N. S., 208; 10 Jur., N. S., 866.

Where, in a sale between brokers, the bought and sold notes were not exchanged, and there was no evidence that the seller had notice of the contract, but the contract was in part performed:—*Held*, that there was a binding memorandum within the Statute of Frauds. *Thompson, ex parte, in re Thorn*, 11 Jur., N. S., 49; 11 L. T., N. S., 586—C.; *Kempson v. Boyle*, 3 H. & C. 763; 11 Jur., N. S., 834; 34 L. J., Exch., 191; 14 W. R. 15.

Where bought and sold notes vary, there is no contract within the Statute of Frauds. *Fisenden v. Levy*, 3 F & F. 477.

Bought notes, signed by the brokers of the purchaser, not stating the name of the seller, but only his broker, and delivered only to the buyer, but followed by part delivery of the goods by the real seller, and received by the buyer:—*Held*, to form a valid contract, and the seller has a right to its production. *Ex parte Thomas, re Thorpe*, 11 Jur., N. S., 49.

[2] Where the boundary of property is described as abutting upon a highway, such boundary must be taken (in the absence of evidence to the contrary) to extend to the middle of such highway. *Reg. v. Board of Works for Strand District*, 9 L. T. N. S. 374; 33 L. J. M. C. 23; 4 B. & S. 526.

Although it is a question of evidence for the jury to identify and determine the position of premises in cases of parcel or no parcel, yet as to deeds, and explanatory maps, it is for the judge to interpret and apply them. *Lyle v. Richards*, 35 L. J. Q. B. 214; 15 L. T. N. S. 947; 1 H. L. 222.

Where a parish extends up to a tidal river, but there is nothing to show whether it does or does not extend beyond the line of the ordinary or medium high-water mark, land between such high-water and low-water mark cannot be assumed to be within the parish, as there is no distinction in this respect between land on the sea-shore and land on the shore of a tidal river. *Bridgewater (Trustees) v. Bootle-cum-Linacre*, 2 L. R. Q. B. 4; 36 L. J. Q. B. 41.

Where the description by a boundary of a portion of an estate in deed of conveyance is ambiguous, but the quantity was stated to be "about 50 acres," and by one construction of the described boundary the quantity would be 82 acres, and by another construction equally probable the quantity would be 54 acres, the Court, reversing the decision of the Court below, adopted the latter construction. *Herrick v. Sixby*, 1 L. R. P. C. 436.

In fixing the boundaries of a town, within 8 & 9 Vict. c. 18, s. 128, the court will be guided by the circumstance of there being a certain continuity of houses or otherwise, and not by the legal boundaries of the borough. *Cerington v. Wycombe Railway Company*, 2 L. R. Eq. 825.

The district of Q. was formed, under 6 & 7 Vic. c. 37, into a district for spiritual purposes; it consisted of a defined part of the township of N. and a defined part of the township of C. N. continued, in its entirety, and so did C. to maintain its own poor and its own highways:—*Held*, that although the district of Q. formed parts of two parishes for all secular purposes, yet that as it had a defined boundary for ecclesiastical purposes, it came within the third division of sec. 12, and was entitled to adopt the Act. *Reg. v. Ratepayers of Northoran and Clayton*, 1 L. R. Q. B. 110.

[3] A baker or other seller of bread who sells a loaf by the denomination of a "quartern loaf," without having ascertained that it weighed four pounds, cannot be said to

BREWER.[1]

BRIDGES.[2]

BROKER.[3] *See* Stock and Stockbrokers.

BROTHEL. *See* Disorderly House.

BUBBLE Act, 6 Geo. 1, c. 18. *See post,* Joint-Stock Companies; Conspiracy; Insurance.

BUILDING Acts. 2 Abr. 536. *See* Metropolitan Building Act.

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sell by weight, and is liable to a penalty under this section. Weighing the dough and making an allowance for shrinkage is not weighing the bread. *Jones v. Huxtable*, 2 L. R. 2 Q. B. 460; 36 L. J. M. C. 122.

By 6 & 7 Wm. 4, c. 37, s. 14, all bread sold beyond the limits of the Metropolis shall be sold by weight:—*Held*, that in order to comply with this provision, it is necessary that bread should not only be sold as of certain weight, but should be actually weighed before being sold. *Williams v. Deygan*, 16 L. T. N. S. 492—Q. B. *See R. v. Kingsby*, 15 J. P. 65, 21 id. 794.

[1] By 27 & 28 Vic. c. 56, s. 8, all licenses granted to brewers of beer for sale after the 30th September, 1864, shall be in force from the day of the date of such licenses respectively until and upon the 30th September next after the granting thereof. By sect. 9 it is enacted that sects. 54 to 65 inclusive (relating to brewers of beer in Ireland) of the 7 & 8 Geo. 4, c. 52, and so much of sect. 13 of the 3 & 4 Will. 4, c. 68, as prohibits any brewer from receiving or holding a license to sell beer, cider or spirits by retail, to be drunk or consumed on the premises, shall be repealed, except as to any thing done or omitted to be done, or as to any penalty or forfeiture which shall respectively have been incurred before the 25th of July, 1864.

[2] A floating bridge, which consists of a vessel propelled by steam from one side of the river to the other, and kept in its course by chains, is in substance a ferry, not a bridge. *Wood v. Gray*, 35 L. J. M. C. 146; 12 L. Ens. 395, Q. B.

By a local act commissioners were constituted to protect the banks of the Ouse, and by another act commissioners were constituted, under the title of the Middle Level Commissioners, with powers over a large district who had built a sluice bridge from bank to bank over the Ouse. The tide having broken in and washed away such sluice bridge and 110 feet of the embankment adjoining, a local act was passed that the Middle Level Commissioners "shall, at their own cost, erect a new bridge, or otherwise provide and make and for ever maintain a good and sufficient continuous road or path over and along or near to that part of the west bank of the river Ouse, where recently stood the sluice bridge and roadway made by the commissioners:"—*Held*, that the statute limited the duty of the commissioners to the making of a bridge of the limits of the former bridge. *Reg. v. Middle Level Commissioners*, 10 L. T. N. S. 375—Q. B.

Vauxhall Bridge was built by a company, under an act which empowered the company to make a road in Lambeth, leading to the bridge and to put up lamp-posts and lamps for lighting the road and bridge, and to levy tolls, which were to be applied to the lighting of the bridge and road; and in case of default in lighting the same was liable to an indictment; and the half of the bridge adjoining the county of Surrey was to be deemed as part of the parish of L., and not a county bridge. By a subsequent act, commissioners were empowered to keep the road to the middle of Vauxhall Bridge properly lighted, and the lamps and lamp-posts, present and future, were vested in the commissioners:—*Held*, that the obligation of lighting the road to the middle of the bridge was transferred from the company to the commissioners, and from them to the vestry of the parish of Lambeth by sects. 90, 130, and 250 of 18 & 19 Vic. c. 120. *Reg. v. Lambeth (Vestry)*, 3 B. & S. 1; 9 Jur., N. S. 48.

By 43 Geo. 3, c. 59, s. 2, where any bridge or bridges, or roads at the end thereof, repaired at the expense of any county, shall be incommodious, it shall be lawful for the justices of the county at quarter sessions, to order and direct such bridge and roads to be widened and made commodious, provided that no money shall be applied to the amendment or alteration of any such bridge, &c., until presentment shall have been made of the insufficiency, or want of reparation, of such bridge, &c., in pursuance of the statutes in force concerning public bridges; the section is permissive, not imperative, and leaves the justices a discretion whether or not to order a bridge to be widened, though it is proved to them to be narrow and incommodious. *Newport Bridge, In re*, 2 El. & El. 377.

Held, also, that the making of the presentment is a condition precedent to the obligation of the justices to make an order. *Id.*

[3] Dealer in shares in a public company (whether British or foreign) is within stat.

BUILDING Contract.[1] *See also* Architect; Work and Labour.

BUILDING, Acquisition of Sites for Public purposes. 31 & 32 Vic. c. 44.

BUILDING (Benefit) Society. *See* Benefit Building Society; and 31 & 32 Vic. c. 124, as to exemptions from stamp duties.

BUILDING, Negligence in. *See* Easement; Negligence.

BUILDINGS, Right to Support for. *See* Easement.

BULL-BAITING. 1 Abr. 358. *See ante*, Animals.

BURGESS. 2 Abr. 2 *See post*, Municipal Corporation.

BURGLARY.[2] 3 Abr. 2, 24 & 25 Vic. c. 96, s. 3.

BURIAL, and Burial Grounds.[3] 3 Abr. 9. *See* Statutes 18 & 19 Vic. c. 78, s. 28; 20 & 21 id. 81; 22 & 23 id. c. 1.

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6 Anne, c. 16, s. 2; 57 Geo. 3, c. 63. *Scott v. Jackson*, 19 C. B. 134.

[1] In an action by a builder:—*Held*, that a sum stipulated in the contract as a penalty for delay in completion, was liquidated damages and not a penalty, and could be set-off without proving actual damage. *Crux v. Aldred*, C. P., 14 W. R. 656.

In a building contract in writing as to "alterations and additions;" it was provided that there should be delivered to the architect "a weekly account of all the work done:"—*Held*, that parol evidence was admissible to show that by the usage of the building trade this meant a weekly account of the day work done. Terms of trade in a contract relating to it are to be construed in the sense which they have acquired in that trade, unless inconsistent with the contract; and parol evidence will be admitted, whether the term be ambiguous or not. *Myers v. Sarl*, 3 Ell. & Ell. 306.

When by a contract between A., a builder, and B., the owner of the land on which certain houses were being built, B. was to make advances according as the houses progressed, and A. was, upon their completion, to be entitled to leases on certain terms, it was stipulated that all building materials which should be brought on the premises by A. should be considered as immediately attached to and belonging to the said premises, and no part should be removed therefrom without the consent, in writing, of B. B. has such an equitable interest in building materials on the premises, as disentitled the sheriff to seize them under an execution against A. *Brown v. Bateman*, 1 L. R., 2 C. P. 272.

Where the architect is not the agent of the defendant, in taking out quantities prior to a building contract, the builder is not entitled to more than contract price. *Scrivener v. Pask*, Ex. Ch., 1 L. R., C. P. 715.

[2] Where persons are charged, under sect. 58 of the 24 & 25 Vic. c. 96, with being found by night armed with an offensive weapon, with intent to enter into a dwelling-house, and to commit a felony therein, the particular house or building must be specified in the indictment, and proof given of their intent to break and enter. *Reg. v. Jarrald*, 9 Cox, C. C., 307; 1 L. & C., C. C., 301; 9 Jur., N. S., 629; 32 L. J., M. C., 258.

On a charge of burglary, possession by the prisoners of part of the stolen property very soon after the burglary, with an account given of it not reasonable or credible, is sufficient *primâ facie* evidence, without express evidence to falsify it. *Reg. v. Exall*, 4 F. & F. 922.

[3] By 27 & 28 Vic. c. 97, after reciting that provision is made for the registration of burials performed according to the Established Church, and of all burials in grounds under the Burial Acts, and that it is expedient that all burials in England be registered. S. 1, all burials in any burial-ground in England shall be registered in register books to be provided for each such burial-ground by the company, body, or persons to whom the same belongs, and to be kept for that purpose according to the laws in force by which registers are required to be kept by rectors, vicars, or curates of parishes or ecclesiastical districts in England. S. 2, such register to be kept for every such burial-ground by some officer to be appointed by the company, body, or persons to whom such burial-ground belongs. S. 3, copies of the register books shall be made, verified, and signed by such officer, and sent by him to the registrar of the diocese wherein the burial-ground is situate, to be kept with the copies of the register books of the parishes within such diocese. S. 4, if any such company wilfully fail to comply with any of the provisions of the Act, they shall be liable for every such offence to a penalty not exceeding 5*l*. S. 5, the register books, or copies thereof, or extracts, evidence of the burials entered therein. S. 6, the register books as to searches, copies, &c., to be subject to the regulations of the

BURIAL-Board. 3 Ab. 16. *See* Stat. 23 & 24 Vic. c. 64; 25 & 26 id. c. 100.

(A) *Appointment and Constitution of Board*, p. 88.
(B) *Board established in District not maintaining its own Poor*, p. 89.
(C) *Burial Fees*, p. 89.
(D) *Authority of Secretary of State*, p. 89.
(E) *Purchase-money payable to Trustees*, p. 89.

(A) *Appointment and Constitution of Board.*[1]

6 & 7 Will. 4, c. 86. S. 7, "burial-ground" to include a vault or other place where any body is buried.

As to right to plant flowers on private graves, *see Ashly v. Harris*, 37 L. J., M. C. 164. As to constructions of Burial Acts, as to power of churchwardens over land formerly used for burial-grounds. *See Foster v. Dodd*, 37 L. J., Q. B. 28.

Where the local ordinary grants a faculty for a vault, the Arches Court will not reverse that decision, except upon very clear and decided reasons.

Where divine service has been performed in a chapel from an early period, a presumption arises that the chapel has been consecrated, and, if so, the ground under it. *Rugg v. Kingsmill*, Arches, L. R., 1 Ad. & Ecc. 343; 36 L. J. 17.

Under a local act, a new church was built and became the parish church, and the old parish church was made a parochial chapel; afterwards, in 1853, by an Order in Council, the parish burial-ground, which adjoined the old church, was shut up, and a cemetery was provided; in 1863, by an Order in Council, part of the parish was assigned to the parochial chapel, and marriages, baptisms, churchings and burials allowed to be performed therein:—*Held*, that the 19 & 20 Vict. c. 104, s. 10, did not vest the burial-ground in the incumbent of the chapel. *Champneys v. Arrowsmith*, 36 L. J., C. P. 265; 2 L. R., C. P. 602; 16 L. T., N. S. 589 C. P. 22; 17 L. T. N. S. 261, Ex. Ch.

As to orders by Secretary of State under 20 & 21 Vict. c. 81, ss. 2 & 3, and 22nd c. 121, *see Foster v. Dodd*, 37 L. J. Ex. 28; 3 L. R., Q. B. 617.

A perpetual curate, not endowed with the glebe lands, or churchyard, has only a qualified right of possession to the churchyard for ecclesiastical purposes, and is not entitled to the pasturage of it; which right remains in the lay rector: and the fact of the long enjoyment by the lay rector, throws upon the curate to show that such right could not have had a legal origin. The fact of the curacy having been augmented from Queen Anne's Bounty does not alter the curate's status in the above respect by reason of the above statute. *Greenslade v. Darby*, L. R., 3 Q. B. 421; 37 L. J. 137; 18 L. T. 463; 16 W. R. 898.

[1] 15 & 16 Vic. c. 85, s. 12, vacancies in a burial-board may be filled up when and as the vestry shall think fit. By 18 & 19 Vic. c. 128, s. 4, every vacancy shall be filled up by the vestry within one month after the vacancy; and in case of neglect, the vacancy may be filled up by the burial-board:—*Held*, that the vestry might fill up a vacancy in the board at any time before the burial-board did so, though not within one month after the vacancy. *Reg. v. South Weald* (*Overseers*), 5 B. & S. 391.

The provisions of 18 & 19 Vict. c. 128, s. 18, do not apply to a burial-ground which is not a burial-ground of any parish, but is the property of private persons. *Reg. v. St. John, Westgate, Burial-board*, 2 B. & S. 703, Ex. Ch.; 31 L. J. Q. B. 205.

By 15 and 16 Vic. c. 85, ss. 10, 11; 16 & 17 Vict. c. 134, the vestry of any parish, having resolved that a burial-ground shall be provided for the parish, shall appoint a burial-board. By sect. 52 "'parish' shall mean every place having separate overseers of the poor, and separately maintaining its own poor." Return, that, in 1840, before the constitution of the burial-board for the parish, that parish had been, under 58 Geo. 3, c. 45, divided into three separate parishes for all ecclesiastical purposes; but did not show that either of the new parishes had appointed a burial-board under 20 & 21 Vict. c. 81, s. 5:—*Held*, no answer. *Reg. v. Walcot* (*Overseers*), 2 B. & S. 555; 31 L. J. Q. B. 217.

A mandamus, reciting that the parish of W. had been divided into three parishes for ecclesiastical purposes, and that the vestry of the parish of St. S., being one of them, had appointed a burial-board, and resolved that a burial-ground should be provided, and that the burial-board should be authorised to incur expenses for that purpose; commanded the overseers to pay the money. Return, that, before the meeting of the vestry of St. S. for determining whether a burial-ground should be provided for that parish, a burial-board was appointed for the original parish of W.:—*Held*, no answer; as the appointment of a burial-

(B) *Board established in District not Maintaining its own Poor.*[1]

(C) *Burial Fees.*[2]

(D) *Authority of Secretary of State.*[3]

(E) *Purchase-money payable to Trustees.*[4]

BYE-Laws.[5]

C.

CAB and Omnibus Proprietors, Liability and rights of.[6]

board for the original parish did not prevent the ecclesiastical parish of St. S. from appointing a separate burial-board under 20 & 21 Vic. c. 81, s. 5. *Reg. v. Walcot, St. Swithin* (*Overseers*), 2 B. & S. 571; 31 L. J. Q. B. 221.

[1] Where two parishes or places, each maintaining its own poor, are united together for ecclesiastical purposes, a burial-board for the whole district, appointed by the vote of the vestry, or meeting in the nature of a vestry, is properly constituted, by virtue of 18 & 19 Vic. c. 128, read in connexion with 15 & 16 Vic. c. 85, although this would have been otherwise under 15 & 16 Vic. c. 85. *Reg. v. Coleshill* (*Overseers*), 2 B. & S. 825; 9 Jur. N. S. 226; 34 L. J. C. P. 225.

In such a case, in the contract for providing for the expenses of the burial-ground, the burial-board ought to fix the sum payable once for all; not to fix one definite proportion of the amount to which each of the two parishes or places is to be chargeable in future; although this also would have been otherwise under the former act. *Id.* And where money is borrowed by the burial-board, towards the expenses of providing the burial-ground, the deed should charge the sum borrowed upon the future rates of the one part of the parish, and also upon the future rates of the other part. *Id.* *See Viner v. Tonbridge* (*Overseers*), 2 El. & El. 9; *Hornby v. Toxteth Park Burial-Board*, 31 Beav. 52.

[2] A burial-ground attached to a district church, the right of interment in which was not confined to the inhabitants of the district, but could be purchased by any stranger:—*Held*, not to entitle the incumbent to any part of burial-fees derived from a cemetery provided for the district under the Burial Acts; 31 L. J. Ch. 52; 31 Beav. 52.

Under the 15 & 16 Vic. c. 85, and 16 & 17 Vic. c. 134, parish clerks and sextons are entitled to perform the same functions and duties, and receive fees in respect of the burials in the new burial-grounds provided by burial-boards, and the burial-boards cannot deprive them of such fees by appointing other persons to do their duties. *Gell v. Birmingham* (*Mayor*), 10 L. T. N. S. 497, Q. B.

St. M. had been a parochial chapelry, having an ancient burial-ground; by an order in council part of St. M. was duly divided from it and erected into a separate district, St. G. having a church and separate burial-ground, and the incumbent of St. G. received the burial fees, &c., for that district. Subsequently St. J. district was divided from St. G., and a church erected, but no separate burial ground was assigned to it, and persons dying in this latter district were buried in St. G., the fees being paid to the incumbent of St. G. One burial-board and ground was afterwards formed for the whole parish:—*Held*, the incumbent of St. M. was entitled to the fees for burial of persons dying in the district of St. M., and the incumbent of St. G. for those dying in St. G. and St. J. and that the words every "incumbent of the parish" meant "every incumbent in the parish." *Day v. Peacock*, 11 Jur. N. S. 428; 34 L. J. C. P. 225; 12 L. T. 571; 18 C. B. 702.

[3] The corporation of London, as managers of Bridewell Hospital, had been lessees for terms of years, of a piece of waste land adjoining; part of this land they used as a burial-ground for the hospital; the burial-ground was never consecrated, and it ceased to be used as a burial-ground in the year 1844, when the last lease expired:—*Held*, that this burial-ground did not come within the meaning of the acts, as it was not a burial-ground under the care of churchwardens, or other persons, at the time of the passing of 20 & 21 Vic. c. 81; and that the Secretary of State had no power to make any order relative thereto. *Foster v. Dodd*, 1 L. R. 1 Q. B. 475; 35 L. J. 136; 14 L. T. 327.

Her Majesty's authority in council can be exercised, only where an existing burial-ground is under the care of churchwardens, or other persons who have the charge of it for the purpose of the burial of the dead. *Foster v. Dodd*, 3 Q. B. 67; 37 L. J. 28.

[4] The purchase-money payable by a railway company on taking part of a burial-ground in the Metropolis, which had been closed by order in council, was paid into court:—*Held*, that the trusts were merely suspended, and the fund must be paid out to the church trustees. *In re the Burial-Ground of St. Pancras*, 26 L. J. C. 52.

[5] May be divisible, bad in part, and valid as to residue. *R. v. Lundie*, 31 L. J. M. C. 157

[6] The proprietors of a cab are liable to

CABLE.[1]

CANAL.[2] 3 Ab. 21. Breaking down Bank, Dam, Wall, Quay, Lock, Sluice, Floodgate, &c., 24 & 25 Vic. c. 97, s. 30.

CAPIAS ad Respondendum.[3] *See* Arrest in Civil Proceedings.

CAPIAS ad Satisfaciendum. 3 Ab. 22. *See* Escape; Execution.

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passengers, though they let it out to hire in the ordinary way, and paid for by the day. *Powles v. Hilder*, 25 L. J. Q. B. 331; S. P. 11, L. T. 199.

The 16 & 17 Vic. c. 127, s. 14, provides that when more than two persons shall be carried inside any hackney carriage, drawn by one horse only, a sum of 6*d.* for each person shall be paid for the whole hiring, in addition to the fare directed to be paid for two persons under 16 & 17 Vic. c. 33, and that two children under ten years of age shall be considered as one adult person: —*Held*, that if two children under ten years of age are carried in excess of two persons, they shall be counted and paid for as one adult; but that if one child only be so conveyed in excess, he shall still be considered as an extra person, and paid for accordingly. *Norton v. Jones*, 8 L. T., N. S., 241.

Where the conductor of an omnibus, by means of fraud or false statements, advises a person not to persist in his attempt to be carried, he is not guilty of a *refusal* to carry, or liable to an action. *Marshall v. Watson*, 15 L. J., N. S., 514.

Notwithstanding the terms of s. 8 of the 6 & 7 Vic. c. 86, a commissioner of police may exercise a discretion in granting licenses to metropolitan omnibus-drivers and conductors, and is not bound to renew such licenses upon the bare production of a certificate of the good conduct and fitness of the applicant. *Mitcham, Ex parte*, 10 Jur. N. S. 1254; 10 L. T. N. S. 573, Q. B.

To entitle a person to notice of action under 6 & 7 Vic. c. 86, s. 47, on the ground that he *bonâ fide* believed that he was entitled under that act to do what he did, the belief must not only be *bonâ fide*, but also reasonable; and therefore a proprietor made an indorsement on the driver's license, which had the effect of depriving him of employment as a cab-driver:—*Held*, not entitled to notice on the ground that he believed that he was putting the law in motion. *Heath v. Brewer*, 15 C. B. N. S. 803; 9 L. T. N. S. 653.

[1] 27 & 28 Vic. c. 27, regulates the proof and sale of chain cables and anchors.

[2] A company was possessed of a canal and the land between it and a sluice; an ancient public footpath passed through the land close to the sluice; there was a towing-path, nine feet wide, by the side of the canal, and an intervening space of twelve feet of grass between the towing-path and the footpath. A person using the path at night missed his way, and fell into the canal and was drowned: —*Held*, that the canal was not so near the footpath as to be adjoining to it, so as to throw upon the company the duty of fencing the canal off. *Binks v. South Yorkshire Railway and River Dun Company*, 3 B. & S. 244; 32 L. J. Q. B. 26; 7 L. T. N. S. 350.

The waters of canal S. had for seventy years, whenever the lock at the junction was opened, flowed into canal B., both canals being made under special acts:—*Held*, that neither on the construction of the acts and the agreements between the two canal companies, nor by the lapse of time, had canal B. acquired a right to the water so flowing. *Staffordshire Canal Company v. Birmingham Canal Company*, 11 Jur. N. S. 71; 11 L. T. N. S. 647, L. J. *Held*, also, that persons claiming to have acquired rights by prescription in the water of a canal, have to meet the additional difficulty, that these waters have been devoted by the legislature to a special purpose. *Id.*

[3] The court will not discharge a married woman in custody under a *ca. sa.*, issued on a judgment obtained against her whilst *sole*, if it appears that she has property settled to her separate use. *Butler, Ex parte, Jay v. Amphlett*, 1 H. & C. 637.

A solicitor does not, by taking the body of his client in execution on a judgment obtained by him at law for his costs in a suit in equity, lose his lien for such costs upon the costs of the suit ordered to be paid by the opposite party to his client. *O'Brien v. Lewis*, 9 Jur. N. S. 620; 32 L. J. Ch. 665; 11 W. R. 716; 8 L. T. N. S. 380. Affirmed on appeal, 9 Jur. N. S. 764; 8 L. T. N. S. 683.

A plaintiff recovered judgment, and took the defendant on a *ca. sa.*; W., attorney of the plaintiff's father, agreed with the defendant that, on delivery of certain documents he would discharge the defendant; and W. gave the defendant an order of discharge, directed by the plaintiff to his attorney; the sheriff refused to discharge, as the order was not directed to him:—*Held*, that the defendant was entitled to his discharge, on condition that no actions were brought against the sheriff, and that the plaintiff's attorney's remedies on the judgment should not be prejudiced. *Langley v. Headland*, 19 C. B. N. S. 42; 34 L. J. C. P. 183; 12 L. T. N. S. 385.

A writ was specially indorsed over 20*l.*; the debt reduced by payment before judgment under 20*l.*; but judgment was signed for the full amount in an action for malicious arrest. The defendant was held estopped by the judgment from bringing

CARRIERS.[1] 3 Ab. 29. *See* also Charter-party; Freight; Innkeeper; Ship and Shipping; and 11 Geo. 4 & Wm. 4, c. 68; 28 & 29 Vic. c. 94.

I. The Nature and Extent of the Obligations of Common Carriers at Common Law.

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I The Nature and Extent of the Obligations of Common Carriers at Common Law.

(A) *Obligation with Reference to the Receiving of Goods for Carriage and Conveying them in due time.*[2]

an action. *Huffer v. Allen*, 36 L. J. Ex. 17.

A writ of summons issued in an action by A. against I. W. K. was by mistake served on M. K., who stated that he was not I. W. K. M. K. did not appear to the writ, and took no notice of it, but judgment was entered up in the action against I. W. K., and a *ca. sa.* issued on the judgment, commanding the sheriff to take I. W. K. The sheriff thereupon arrested M. K.:—*Held*, that the sheriff was liable to an action for false imprisonment at the suit of M. K. *Kelly v. Lawrence*, 10 Jur. N. S. 636; 33 L. J. Ex. 197; 10 L. T. N. S. 195; 3 H. & C. 1; Ex. Ch.

[1] As to duty payable by railway companies on their passenger traffic, see 26 & 27 Vic. c. 33, s. 14; and rendering accounts, see s. 13.

[2] In the absence of an express contract, the obligation of a carrier of goods is to carry them according to the usual route professed by him to the public, and to deliver them within a reasonable time. *Hales v. London and North Western*, 4 B. & S. 66.

There is no obligation on a railway company, whether at common law or under the 17 & 18 Vic. c. 31, to carry goods otherwise than according to their profession. *Oxlade v. North Eastern Railway Company*, 15 C. B. N. S. 680; *Great Northern Railway Company v. Taylor*, 1 H. & N. 471; 1 L. R. C. P. 385.

A carrier is not liable for the non-performance of any special arrangement made by his agent without his sanction. *Butterworth v. Brownlow*, 34 L. J. 266; 19 C. B. 409.

But an agent for two companies may bind the company conveying the longer distance for the risks of the whole journey. *Webber v. Great Western Railway*, 3 H. & C. 771; 34 L. J. Ex. 170.

Railway companies are responsible for the safe treatment of animals entrusted to them for carriage from the moment that they receive the animals into their charge till the carriages that have conveyed them are unloaded. *Moffat v. Great Western Railway Company*, 15 L. T. N. S. 630.

On a contract made in a foreign country with carriers for the conveyance of goods to this country, and a breach of duty by negligence, in causing an injury to them in that country, no question being raised as to the *lex loci contractûs*, it was left to the jury, upon an express contract, and upon evidence as to the course of business, and the other facts in the case, as occurring abroad, to form a judgment as to whether there had

(B) *Obligations with Respect to the Delivery of Goods.*[1]

II. The Carriers' Act.[2]

been such negligence as would be a breach of duty in the carrier, and as to what would be reasonable under such circumstances. *Cohen v. Gaudet*, 8 F. & F. 455.

[1] A railway company undertaking to carry goods from A. to B., must deliver them within a reasonable time, having reference to the means at their disposal for forwarding them; and they are not justified in delaying the delivery by adopting a particular mode of forwarding the goods, merely because that is the usual mode adopted. *Hales v. The London and North Western Railway Company*, 4 B. & S. 66; 32 L. J. Q. B. 292; 8 L. T. N. S. 421.

A stipulation printed at the back of a consignment note of meat, that "The company will not be responsible for any damage to any such articles (including meat) on the ground of loss of market, provided the same be delivered within a reasonable time after the arrival thereof at the station from whence delivery is to be made," is a reasonable condition. *Lord v. The Midland Railway Company*, L. R. C. P. 339; 36 L. J. 170.

Where an unavoidable obstruction on a company's line prevented them from carrying the plaintiff's goods within the usual (a reasonable) time, caused by an accident resulting solely from the negligence of another company who had, under an agreement with the defendants, running powers over their line; the defendants are not liable to the plaintiff for damage to his goods caused by the delay. *Taylor v. The Great Northern Railway Company*, 1 H. & R. 471; 1 Law Rep. C. P. 385; 35 L. J. 210, C. P.; 12 Jur. N. S. 372: 14 L. T. N. S. 363. *See Webber v. Great Western Railway Company*, 4 H. & C. 582, Ex. Ch.

As to injury to cattle by non-delivery, *Shepherd v. The Bristol and Exeter Railway Company*, 37 L. J. Ex. 113.

Where two railway companies B. and G. have traffic arrangements together, and B. received cattle to be conveyed over their own line and also that of company G., and the cattle reached the terminus for delivery at a time when, according to police arrangements, they could not be driven off the premises, and they were penned on company G.'s premises, their foreman and the company's agent being present:—*Held*, that this was a good delivery by company B., and that company B. was not liable for subsequent damage. *Shepherd v. Bristol and Exeter Railway Company;* L. R., 3 Ex. 189; 37 L. J. 113; 18 L. T. 382.

[2] 28 & 29 Vic. c. 94, s. 1, in the 11 Geo. 4, & 1 Will. 4, s. 68, the term "lace" shall, with respect to any parcel or package delivered after the 30th September, 1865, be construed as not including machine-made lace; and by sec. 2 the act may be cited as "The Carriers' Act Amendment Act, 1865."

Where a carrier makes one contract for carriage, partly by land and partly by water, the contract is divisible so as to bring that part which applies to carriage by land within the 11 Geo. 4 & 1 Wm. 4, c. 68. *Le Couteur v. London and South Western Railway Company*, 6 B. & S. 961; 35 L. J., Q. B. 40; 13 L. T. N. S. 325.

"Elastic silk webbing" is a woven fabric, each yard of which contains an ounce of silk, an ounce and a quarter of india rubber, and three quarters of an ounce of cotton, the silk being of greater value than the two other materials:"—*Held*, as a matter of fact (the question being reserved for the court, with power to draw inferences), that this webbing was "silks wrought up with other materials," within the 11 Geo. 4 & 1 Wm. 4, c. 68, s. 1. *Brunt v. Midland Railway Company*, 2 H. & C. 889; 10 Jur. N. S. 181; 33 L. J. Exch. 187; 9 L. T. N. S. 690. Plaintiff was the owner of a valuable piece of lace (intended for use in celebrating the communion), which, together with the certificate of the novelty of the pattern, was put in a gilt frame and covered with glass, for the purpose of being shown at an exhibition of ecclesiastical articles. The whole was put in a packing-case, and sent, without any declaration within the Carriers' Act, by the defendant's railway and lost:—*Held*, that though the plaintiff was not entitled to recover the values of the lace, certificate, and glass, he was entitled to recover the values of the gilt frame and packing-case. *Treadwin v. the Great Eastern Railway Co.*, 37 L. J. C. P.; 19 C. B. N. S. 51; 3 L. R. C. P. 309.

The frame and packing-case of lace may be recovered for, though not the lace. *Treadway v. Great Eastern Railway*, 3 L. J. N. 27.

A statement of the value of an article sent by a railway company, to be within the 17 & 18 Vic. 31, s. 7, must be a declaration of value made by the sender, with the intention that it shall be so understood, and for the purpose of insurance. *Robinson v. London and South Western Railway Company*, 19 C. B. N. S. 51; 11 Jur. N. S. 390; 34 L. J. C. P. 234; *London and North Western Railway Company*, 343; 34 L. J., Exch., 39—Exch. Cham.

Horses, above the value 10*l.* each, were delivered to a railway company to be conveyed by them for hire, the owner having previously signed a declaration that the horses were under the value of 10*l.* each. The horses were injured by the negligence of the company:—*Held*, that the parties having agreed to act upon an assumed state

III. Actions by and against Carriers.[1]

of facts, both parties were bound by it, and the owner was concluded by his statement of value. *M'Cance v. London and North Western Railway Company*, 10 Jur. N. S. 1058; 11 L. T. N. S. 426; 3 H. & L. 347; 34 L. J. 39.

A special contract not to be responsible under any circumstances for any loss whatever in conveyance of fish other than gross neglect or fraud—that is the want of reasonable care, skill, and expedition that may be properly expected to be exercised is ruled. *Beale v. S. D. Railway Co.*, 3 H. & C. 337, Exch.

But not one conferring immunity from consequences arising from over-carriage, detention, or delay, however caused. *Allday v. Great Western Railway Co.*, 34 L. J. Q. B. 5.

Plaintiff sent a horse, worth 1000*l.*, by a groom to defendants' railway station, for the purpose of being carried. As the groom was leading it, by direction of one of the railway porters, to a particular part of the yard, the horse was startled by another horse, and backed in consequence, on some sharp iron girders, which seriously injured it, so that it was necessary to kill it. No declaration of value had been made, nor any ticket taken out, nor any fare demanded. It was the usual practice at that station to put the horse into the horse-box before taking the ticket. The jury found that defendants were guilty of negligence in leaving the girders where they were lying:—*Held*, that the railway company were protected by the Railway and Canal Traffic Act, from being responsible to plaintiff for any greater damages in respect of the injury to the horse than 50*l.* *Hodyman v. The West Midland Railway Co.*, 35 L. J. Q. B. Ex. Ch. 85; *Robinson v. The Great Western Railway Co.*, 34 L. J. C. P. 234.

[1] Where a servant takes a ticket himself, the contract is with the servant, and the master cannot sue. *Alton v. Midland Railway Company*, 19 C. B. N. S. 213; 34 L. J. C. P. 292.

The carrier may be liable in tort for negligence in carrying a passenger's luggage, though there be no contract with the owner of the luggage. *Martin v. Great India Peninsular Railway*, 37 L. J. Ex. 27.

An action against a carrier for not safely delivering goods is in tort not a contract founded on the custom of the realm. *Tallow v. Great Western Railway*, 2 E. & E. 844.

When goods are lost the measure of damages is the market value at the place of destination, or if this test is inapplicable their cost price — expense to the party, if paid, and reasonable profit. *O'Hanlan v. Great Western Railway*, 34 L. J. Q. B. 154; 12 L. T. N. S. 490; 6 B. & S. 484; but when such profits are claimed the company should have notice of the purpose for which the goods were sent. *Great Western v. Redmayne*, 1 L. R. C. P. 329.

Statements by servants of railway companies not accompanying acts connected with their duties, but made on subsequent inquiries are not admissible. *Great Western Railway v. Willis*, C. P. 34 L. J. 195.

A., by parol, made arrangements with the defendants, a railway company to convey cattle for him to K. station; he at the same time, without noticing its contents signed a consignment note, by which the cattle were directed to be taken to E., an intermediate station on the line to K.:—*Held*, that parol evidence was admissible to show that the defendants had agreed to carry on the cattle to K., as it did not contradict, but only supplemented the written contract. *Jeffery v. Walton* (1 Stark, 267) remarked on. *Malpas v. the London and South-Western Railway Company*, 1 Law Rep. C. P. 336; 35 L. J. 166, C. P.; 12 Jur. N. S. 271.

In an action by the owner of cattle against a railway company for unreasonable delay in forwarding cattle, the judge, in charging the jury, refused to tell them, at the request of defendants, that in considering the question of reasonable delay, they were to consider the company as not bound to forward the cattle by any but ordinary trains:—*Held*, the judge was right in so refusing. *Donohoe v. London and North Western Railway Company*, Ir. Rep. 1 C. L. 304.

In order to recover damages for non-sale, owing to delay in carrying, there must have been an actual contract to buy for a price. *Hart v. Baxendale*, 16 L. T. N. S. 390.

As no damages but such as were reasonably within the contemplation of the parties to a contract can be recovered upon breach of it, a commercial traveller who delivers to a common carrier a package of samples, for carriage to L., not telling of what it consisted, cannot recover as damages, for delay in delivery, his hotel expenses at L. for the time he was uselessly detained there. Such damages are too remote. *Woodger v. Great Western R.* L. R. 2 C. P. 318; 36 L. J. 177; 6 R. & S. 484; *Hadley v. Baxendale* 9 Ex. 41; *Watson v. Ambergale Co.*, 15 Jur. 448.

In measuring the damages caused by the delay, the fact that they were forwarded to the traveller of the owner, and that in consequence of the delay he had missed the chance of selling and making a profit at the town to which they had been sent, cannot be taken into consideration. *Great Western Railway Company v. Redmayne*, 1 L. R. C. P. 329; 12 Jur 692.

In an action against a railway company for the non-delivery of drapery goods, the measure of damages is the price at which the goods can be obtained in the market, if there be one at the place and time at which they ought to have been delivered; if not,

IV. Of the Obligations Imposed by the Railway and Canal Traffic Act, 1854.[1]

the damages must be ascertained by taking into consideration, in addition to the cost price and the expense of transit, the reasonable profit of the importer. *O'Hanlon v. The Great Western Railway Company*, 6 B & S. 484; *Williams v. Reynolds*, 6 B & S 495.

In an action against carriers for the non-delivery, according to contract, of goods of a marketable kind intended for sale, the jury may give as damages the difference between the market value on the day the goods ought to have been brought to market and the day on which they are afterwards brought to market, although no notice be given to the carrier that the goods were intended for market; for such damages are the natural and immediate consequence of the defendant's act. *Collard v. the South-Eastern Rail. Co.*, 30 Law J. Rep. N. S. Exch. 393; 7 Hurls. & N. 79. *See Rice v. Baxendale*, 30 L. J. Ex. 371; 34 id. Q. B. 154; 6 B. & S. 484.

A commercial traveller sent his traveller's case of goods by luggage train from O. to L, without any intimation respecting it of any kind; there was a delay of two days, and he claimed his hotel expenses for that time, on the ground of his not being able to conduct his business:—*Held*, that he was not entitled to recover them. *Woodger v. Great Western Railway Company*, 34 L. J. C. P. 177; 15 L. T. 579.

[1] All the parts of sect. 7 of the 17 & 18 Vic. c. 31, must be read together, and the conditions imposed by railway companies in limitation of their liability as common carriers must not only be, in the opinion of a court, just and reasonable, but must also be embodied in a special contract in writing, signed by the owner or sender of the goods. *Peck v. North Staffordshire Railway Company*, 10 H. L. Cas. 473; 9 Jur. N. S. 914; 32 L. J. Q. B. 241.

The condition that a company should not be responsible for injury to marbles, unless the same were declared insured according to their value, is not a just and reasonable condition, within the intent and meaning of the act, as it would exempt from all liability. *Id.*

A special contract in writing must either, in terms or by distinct reference, set out or embody the conditions. *Id.*; *Peek v. North Staffordshire Railway Company*, 9 Jur. N. S. 914; 32 L. J. Q. B. 241; 8 L. T. N. S. 768—H. L.; *Aldridge v. Great Western Railway Company*, 15 C. B. N. S. 582; 33 L. J. C. P. 161.

A condition, in a special contract by a railway company for the carriage of cattle, that the owner shall undertake all risks of loading, unloading, and damage, whether arising from the negligence or default of the company or their servants, or from defect or imperfection in the station, platform or place of loading and unloading, or the carriage in which they may be loaded or conveyed, or from other cause whatsoever, is unreasonable; and it does not cease to be so because, by another condition, the company undertake to grant free passes to persons having the care of live stock. *Rooth v. the North-Eastern Railway Company*, 36 L. J. Ex. 83.

Nor does it relieve the company from their duty to keep their station in a safe and proper condition, and to deliver the cattle in a fit and proper place. *Id.*

The portion of the condition relating to the risks of loading and unloading it seems, is not unreasonable; but, *qy.* whether reasonable in the portion relating to the risk of losing. 2 L. R. Exch. 173; 15 W. R. 695; 15 L. T. N. S. 624. *See Pecker v. Stafford*, 10 H. L. 473.

A note signed by the party sending meat by a rail contained a condition as to meat and other perishable articles in it, that the company would not be responsible "for any damage to any such articles, on the ground of loss of market, provided the same was delivered within a reasonable time after the arrival thereof at the station from whence delivery was made:"—*Held*, that the condition was reasonable. *Lord v. the Midland Railway Company*, 36 L. J. C. P. 170.

So a notice that fish would only be conveyed on their line by special agreement, and by particular trains; and that the company shall not be responsible, under any circumstances, for loss of market, or for other loss or injury arising from delay or detention of train, exposure to weather, stowage, or from any cause whatever other than gross neglect or fraud:—*Held*, just and reasonable. *Beal v. South Western Railway Company*, 3 H. & C. 337—Ex. Ch.

In the case of a carrier, gross negligence includes the want of that reasonable care, skill, and expedition, which may properly be expected from him. *Id.*; *See Baxendale v. Great Western Railway Company*, 14 C. B. N. S. 1; 9 Jur. N. S. 1174; 32 L. J. C. P. 225; 8 L. T. N. S. 833.; 16 C. B. N. S. 137; 10 Jur. N. S. 496; 33 L. J. C. P. 197; 12 W. R. 602; 9 L. T. N. S. 814—Ex. Ch.

Inequality of charge applies to railway carriers charging parcel rates when several in one consignment, although taken beyond the limits of their route. *Baxendale v. South Western Railway*, 35 L. J. Ex. 108. But consignee cannot insist on company taking to Isle of Wight charging a sum equivalent in proportion to Southampton. *Id.*

If jury believe that defendants knowingly and purposely charged plaintiff at a higher rate than other persons upon a packed parcel of goods, they ought to find a verdict for him. *Sutton v. Great Western Railway Company; and Sutton v. South Eastern Railway Company*, 35 L. J. Ex. 18.

The Court of Exchequer will not grant an injunction before trial to restrain an over-

V. Sending Dangerous Commodities without Notice.[1] *See* s. 29 Vic. c. 20, s. 15.

VI. Obligation of Carriers with Reference to Carriage of Passengers and their Luggage.[2]

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charge by a railway company for packed parcels. *Sutton v. South Eastern Railway Company*, 11 Jur. N. S. 935; 35 L. J. Exch. 38; 14 W. R. 130; 13 L. T. N. S. 438. *See Bramley v. South Eastern Railway Company*, 9 Jur. 329, C. P.

Applications against railways for "undue preference" in receiving and forwarding traffic on their lines should be, it seems, decided on its own special facts, and that in such cases the court was not bound by precedents as on points of law; and they refused to follow *Baxendale v. London and South Western Railway Company*, 12 C. B. N. S. 758, and *Garton v. Great Western Railway Company*, 6 C. B. N. S. 639; *Palmer v. London and South Eastern Railway Company*, 1 L. R., C. P. 588; 35 L. J. 289.

Injunction granted to restrain them from requiring other carriers to bring their goods to the railway station at an earlier hour than they received their goods delivered at their own receiving offices. *Baxendale and London and South Western Railway Company, In re*, 12 C. B. 758.

Where a railway company has so acted as to render it necessary and proper for any person to come to the court for redress under the 17 & 18 Vic. c. 31, the court will as a general rule, make the rule absolute with costs. *Id.; Baxendale v. West Midland Railway Company*, 3 Giff. 650; Affirmed on appeal, 7 L. T. N. S. 297—C.

The 17 & 18 Vic. c. 31, which gives power to courts of common law to grant the preventive remedy, does not, by giving a concurrent jurisdiction, abridge the jurisdiction of the Court of Chancery. *Id.*

[1] By 29 & 30 Vic. c. 69, s. 1, the articles known as nitro-glycerine or glonoine oil are declared to be specially dangerous within that act; and by sect. 2, other goods may be declared to be dangerous by order in council.

By sect. 3 such goods are to be distinctly marked specially dangerous, and notice given on delivery to carriers by land, rail, or water under specific penalties.

By sect. 6 no carrier shall be bound to receive or carry any goods which are specially dangerous.

As the act makes the sending of dangerous goods, without notice, a criminal offence; a guilty knowledge on the part of the sender is necessary to render him liable. *Hearne v. Garton*, 2 El. & El. 66; 28 L. J. M. C. 216; *see* 31 L. J. C. P. 157; 11 C. B. 553; *Brass v. Maitland*, 26 L. J. R. Q. B. 49; and *Farrant v. Barnes*, 31 L. J. R. C. P. 137; 23 & 24 Vic. c. 139, the Petroleum Act, and 25 & 26 Vic. c. 66; and 31 & 32 Vic.

[2] The distinction between the liability of carriers of goods and carriers of passengers is that the former is an insurer; the latter is only liable for negligence. *Redhead v. Midland Railway Company*, 1 L. R. 2 Q. B. 412; 36 L. J. 181. Hence railways as common carriers of passengers for hire, do not by their contract to carry implicitly warrant that their carriages are roadworthy; and though they are liable for negligence, they are not for an injury caused to a passenger by a hidden defect, which no care or skill could have discovered. If they are not insurers they are bound to supply carriages reasonably fit for the journey. *Id.* And although a carrier of passengers does not warrant their safety, or their due arrival at their destination, yet he warrants that the vehicle in which he conveys them is, at the time of the commencement of the journey, free from all defects of construction, and roadworthy, as far as human care and foresight can provide. *Burns v. Cork and Bandon Railway Company*, 13 Ir. Com. Law Rep. 543, Exch.

A railway company, who purchased rolling stock from competent manufacturers, is responsible for the negligence of those manufacturers to the same extent as they would be in case they were themselves the manufacturers. *Id.*

A contract to convey passengers and luggage from a port in England to the Mauritius is to be construed by the common law, and special contract containing a condition that the former will not be liable for damage or loss of passengers' luggage is valid. *Re P. and O. Steam Company*, 11 Jur. 771; 12 L. T. (N. S.) 808, P. C.

Carriers knowing of an unusual and peculiar danger are bound for the safety of passengers to take every reasonable precaution to prevent accident. *Daniel v. Metropolitan Railway Company*, 3 L. J. N. 57.

The mere taking a ticket does not impose upon the company a duty to have a train ready to start at the time the passenger expects. *Hart v. Gilbertson*, 19 C. B. (N. S.) 310; 34 L. J. C. P. 264. Nor is there any guarantee as to the time of arrival, provided there be no negligence or want of care on the part of the company. *Prevost v. Great Western*, 13 L. T. (N. S.) 20.

Where the bye-law of a railway company imposes certain duties on passengers, and lays correlative duties on the company, the company must have strictly complied with the bye-law on their part to entitle them to enforce it against the passenger. 35 L. J. Q. B. 15. *Jennings v. the Great Northern Railway Company; Dearden v. Townsend*, id. M. C. 50; 13 L. T. (N S.) 323.

The 8 & 9 Vic. c. 20, s. 103 (Railway Clauses Act), has only reference to persons

CASE, Special. *See* Special Case.

CATTLE. *See also* ante, Animals.

I. As to Cattle Plague.[1] *See* Stats. 11 & 12 Vic. c. 67; 16 & 17 id. c. 62; 28 & 29 id. c. 119; 29 & 30 id. c. 2; id. c. 15; id. c. 102; 30 & 31 id. c. 125; 31 & 32 id. c. 35. As to facilitating the assurance of Cattle, see 29 & 30 Vic. c. 36.

travelling without a ticket, and with fraudulent intent. *Dearden v. Townsend*, 1 L. R. Q. B. 10; 12 Jur. N. S. 120; 35 L. J., M. C. 50; 14 W. R. 52; 13 L. T. (N. S.) 323.

A company being carriers in India, received the plaintiff's goods under a contract, by which the baggage of certain troops (including their goods) was to remain in charge of a guard provided by the troops, "the company accepting no responsibility:"—*Held*, that the stipulation did not exempt the company from liability for a loss arising wholly from their own negligence. *Martin v. Great Indian Peninsular Railway Company*, 3 L. R. Exch. 9; 17 L. T. (N. S.) 349; 27 L. J. Exch. 27.

A common carrier who enters into a contract with a passenger to convey him from A. to B., part of the journey to be performed by land in England, and the rest by sea, is entitled to the protection of the Carriers' Act, 11 Geo. 4 & 1 Wm. 4, c. 68. *Le Couteur v. London and South Western Railway Company*, 6 B. & S. 961 *Peninsular and Oriental Steam Company v. Shand*, 11 Jur. N. S. 771; 12 L. T. 308, C. P.

A railway company's act enacted that every passenger travelling upon the railways may take with him his ordinary luggage, not exceeding 150 lbs. in weight for first-class passengers, and 100 lbs. in weight for second and third class passengers, without any extra charge being made for the carriage thereof:—*Held*, that this did not preclude the company from making special arrangements for the exclusion of baggage by cheap excursion trains. *Rumsey v. North Eastern Railway Company*, 14 C. B. (N. S.) 641; 32 L. J. C. P. 244; 8 L. T. (N. S.) 666. Husband and wife travelling together are entitled to double usual weight. 8 Ex. R. 30.

A passenger, who took a ticket for an excursion train, referring him to bills on which it was announced that luggage taken by the train was at the passengers' risk, is not entitled to sue for loss of his luggage by negligence, though he did not see the handbills or know of the condition. *Stewart v. London and North Western Railway Company*, 10 Jur. N. S. 805; 33 L. J. Exch. 199; 12 W. R. 689; 10 L. T. (N. S.) 302.

By "ordinary luggage" of a passenger by railway is meant articles for the personal use of the passenger; and in an action by an attorney for damages for the detention of a portmanteau, in which, along with his clothes, &c. he had put certain deeds and papers of his clients for use in a county court action:—*Held*, that the deeds and papers, as well as bank-notes, were not "ordinary luggage." *Phelps v. London and North Western Railway Company*, C. P. 34 L. J. (N. S.) 259. *Cahill v. London and North Western Railway Company*, 13 C. B. (N. S.) 818; 31 L. J. C. P. 271; nor sketches or drawings carried by an artist. *Mytton v. Midland R. C.* 28 L. J. Ex. 385; 4 H. & N. 615; or merchandise unconnected with personal use or comfort. *Great Northern R. C. v. Shepherd*, 8 Ex. 30; or usually required by passengers. *Phelps v. London and North Western*, *supra*. See other cases cited. Marshall, "Railway Carriers."

A passenger, with knowledge that the company, though allowing each passenger to carry free of charge a certain amount of luggage, required all merchandise carried to be paid for, took with him, as if it was personal luggage, a case of merchandise, and did not pay for it as such:—*Held*, that no contract whatever touching the same arose between him and the company, and therefore on its being lost, he was not entitled to recover the value of it from the company. *Belfast and Ballymena Railway Company v. Keys*, 9 H. L. Cas. 556. *Stewart v. London and North Western Railway Company*, 3 H. & C. 135.

A passenger by railway may so entirely take charge of his luggage and other articles as to relieve the company from their ordinary liability as carriers, but the circumstances must be very strong to do so; the mere taking the things into the carriage with himself will not have that effect; that is done by mutual consent. *Le Couteur v. London and South Western Railway Company*, 1 L. R. Q. B. 54; 34 L. J. Q. B. 49.

A passenger by a railway carriage was ordered to leave it by the company's servants under circumstances which did not justify them in what they were doing. It appeared that upon leaving the carriage he placed a pair of race-glasses upon the seat, which, as the train proceeded, were lost:—*Held*, that the loss of these glasses was not the natural result of the wrongful act, and that the plaintiff could not recover their value. *Glover v. The London and South-Western Railway Company*, 37 L. J. Q. B. 57.

[1] By an order of the Privy Council, issued under the 11 & 12 Vic. c. 107, every inspector has power to cause to be cleansed and disinfected within his district any premises in which animals labouring under the cattle plague have been, and every owner or occupier of such premises is to obey any order given by such inspector for that pur-

II. As to Selling Diseased Cattle.[1]

III. As to Trespassing by. *See* Replevin Trespass.

IV. Driving through Streets.[2]

CEMETERIES, making of. *See* 10 & 11 Vic. c. 65.

CENTRAL CRIMINAL COURT.[3]

CERTIFICATE. *See* Architect.

CERTIORARI.[4] As to removal of causes in the County Courts by, *see post*, County Courts. *See* Sessions.

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pose, subject to a penalty of 20*l.* for disobedience.

An inspector gave an order to the foreman of the appellant (who was not present, and resided at a distance) to disinfect the premises, which order was not obeyed. It seems the appellant is not liable for the disobedience of the order by his foreman. *Searle v. Reynolds*, 7 B. & S. 704; 14 L. T. (N. S.) 518, Q. B.

Where on the hearing of an information for removing cattle without a license, the magistrates, on the production of a license, have no jurisdiction to inquire into the sufficiency of the evidence upon which it was granted. *Stanhope*, app. *v. Thorsby*, resp. 1 Law Rep. C. P. 423; 35 L. J. 261, C. P.; 12 Jur. N. S. 374; 14 L. T. (N. S.) 302.

By an order of the quarter sessions of Buckinghamshire, it was declared that after a certain date no sheep, &c. should be "removed from any one farm or place in the said county to any other farm or place therein," except upon certain conditions:—*Held*, that the word "place" must be construed *ejusdem generis* with the word "farm," and that no violation of the order is committed by the removal of sheep from one part of a farm to another part of the same farm, even though in such removal a public highway has to be crossed. *Eustace* app. *v. Sargent*, resp., 14 L. T. (N. S.) 552.

The removal of an infected animal from one county to another county does not give the justices of the latter county jurisdiction to deal with the case. The offence is complete as soon as the animal has been removed from its place of location, and therefore the justices of the former county alone have power to hear the cause, or to punish the offender. *Reg. v. Williams*, 15 L. T. (N. S.) 290.

[1] Defendant sold a cow to plaintiff, warranting it sound, and he fraudulently represented to plaintiff that it was free from infectious disease, although he knew that it was suffering from infectious disease. The cow died, having infected other cows of plaintiff's, which also died:—*Held*, defendant was liable, not only for the price of the cow he had sold, but also for the value of the other cows, the loss of which was the natural result of relying on the fraudulent representation. *Mullett v. Mason*, 1 L. R.; 1 C. P. 559; 35 L. J. C. P. 299.

[2] A local act of parliament (Islington Parish Act) prohibited any drover or other person from "conducting or driving," through the streets, &c. any oxen, sheep, swine, or other cattle, on the Lord's day:—*Held*, that driving a horse in a van, in which a number of calves were, was not a driving or conducting within the prohibition. *Triggs v. Lester*, 1 L. R. Q. B. 259. The employer of a drover is not liable for his negligence. 12 A. R. 737.

[3] This court has jurisdiction over the crews of foreigners in British vessels. *R. v. Anderson*, 3 L. J. N. 248.

[4] Writs of certiorari are granted, not as matter of right, but in the exercise of a sound judicial discretion. *Mayo County, In re*, 14 Ir. Com. Law Rep. 392, Q. B.

An order of justices not warranted by the provisions of an act of parliament, may be removed into the Q. B. by certiorari, though the act contains a section taking away the certiorari. *Reg. v. Gosse*, 3 E. & E. 727.

It is only in very exceptional cases that indictments for felony will be permitted to be removed into the Queen's Bench, and where an application was upon the ground of local prejudice, and difficulty in obtaining a jury, the court recommended an application to the recorder to send the case to the assizes. *Reg. v. Reynolds*, 12 L. T.

Nor will the court grant a certiorari to bring up a conviction by justices in a matter over which they have jurisdiction, even though it be alleged that they convicted without any evidence whatever. *Ex parte Blewitt, re The Justices of Shropshire*, 14 L. T. (N. S.) 598, Q. B.

The court will not quash a conviction unless the original record is brought up. *Reg. v. Brickhall*, 12 W. R. 909.—Q. B. Nor will the court issue a certiorari to bring up a distress warrant, issued by two justices, on an order of a revising barrister for the payment of costs in pursuance of 6 & 7 Vic. c. 18, sections 46, 71. *Bradley, In re*, 11 W. R. 640. Or where it is a question whether a person appointed an overseer by a justice's order is a householder. The objection must be taken by appeal to the quarter sessions. *Pudding Norton* (*Over-*

CHAMBERS, Judges. 5 Abr. 258.

(A) *Jurisdiction of Judge at.*[1]

(B) *Of Masters at.*[2]

CHAMPERTY.[3]

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seers), *In re*, 33 L. J. M. C. 136; W. R. 762; 10 L. T. N. S. 386. A certiorari was granted to bring up a conviction by justices for an offence under the Railway Clauses Act, upon the ground that they were shareholders, and therefore interested in the railway company, in respect of which the offence was committed. *Reg. v. Hammond*, 12 W. R. 208. So where it appeared that a sheriff, by whom a jury had been summoned under the Lands Clauses Act, for the purpose of awarding compensation, was a shareholder in the company, a certiorari was granted to bring up the inquisition. *Reg. v. London and North Western Railway*, 12 W. R. 208. A certiorari lies from the Court of Chancery to remove suits on equity side of Lord Mayor's Court. *Davies v. M'Henry*, 673 3 L. R. Ch. 200; 17 L. T. 307. In a crown case, removed by certiorari, issue not having been joined before the commission day, although by the default of the officer, cannot be entered for trial. *Reg. v. Luckie*, 4 F. & F. 502.

[1] When a judge has made an order on an *ex-parte* statement, the other side must apply first to the judge, to reconsider his order, before applying to the court to set it aside. *Day v. Vincent*, 9 L. T. N. S. 654.—Ex. If it be intended to ask as part of a judge's order that costs be paid by the plaintiff's attorney, on the ground of alleged misconduct on his part, it is necessary to give distinct notice in the summons of the intention to make such application. *Rough v. Alberty*, 33 L. J. Q. B. 127. Where an order is made that no action should be brought, and the party obtaining the order takes the benefit of it, he cannot afterwards come to discharge so much of the order as imposed the condition. *Hayward v. Duff*, 12 C. B. N. S. 364; *Pierce v. Chaplin*, 9 Q. B. 802; *Wilcox v. Odden*, 15 C. B. N. S. 837. Where a judge has made an order out of term, to set aside a judgment by default on an affidavit of merits, and on payment of the plaintiff's costs, the defendant, by complying with such order, for the purpose of getting rid of the judgment, does not so acquiesce in the order as to prevent his applying to the court in the next ensuing term to alter its terms. *Connelly v. Bremner*, 1 L. R. C. P. 557; 35 L. J. C. P. 319. Where a rule *nisi* to rescind an order of a judge, by way of appeal from the decision of the judge, is discharged, it is the practice to discharge the rule with costs; but where the point raised was new and abstruse, the court refused the costs, 35 L. J. Q. B. 81.

[2] By Reg. Gen. M. T. 1867, the master of the Courts at Common Law at Westminster is hereby empowered to do all such things, and exercise all such authority and jurisdiction in respect of the same, as by virtue of any statute or custom, or by the rules and practice of the said courts, were at the time of the passing of the act, 30 & 31 Vic., and are now done, transacted by any judge of the said courts sitting at chambers, except in matters relating to the liberty of the subject, and except (unless by consent of the parties) in respect of the following proceedings and matters, that is to say:—All matters relating to criminal proceedings. The removal of causes from inferior courts, other than the removal of judgments for the purpose of having execution. Prohibitions and injunctions. The referring of causes under the Common Law Procedure Act, 1854. The rectifying of omissions or mistakes in the register under the Joint-Stock Companies' Acts. Interpleader—other than such matters arising in interpleader, as relates to practice only. Discovery—whether by inspection of documents, interrogatories or otherwise. Reviewing taxation of costs. Staying proceedings after verdict. Acknowledgments of married women. Leave to sue *in formâ pauperis*. Orders charging stock, funds, annuities, or shares, or dividends, or annual produce thereof. That in case any matter shall appear to the master to be proper for the decision of a judge, the master may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the master with such directions as he may think fit. That appeals from the master's order or decision shall be made by summons, to be taken out within four days after the decision complained of, or such further time as may be allowed. The appeal to be no stay, unless so ordered by a judge or master. The costs of such appeal shall be in the discretion of the judge. That all summonses be issued by a judge as heretofore; but that orders by the masters be made in their own names. That the scale of costs for all matters done by and before the masters shall be the same as are fixed for business done by and before the judge. *See Reg. Gen.* 1868.

[3] An agreement void for champerty is not less so because made with a person domiciled abroad, *Grill v. Levy*, 10 Jur. 210 C. P. The purchase of an estate for the purpose of setting aside a previous agreement affecting the property on the ground of fraud partakes of the nature of champerty, and will not be enforced. *De Hoghton v. Money*, 2 L. R. Ch. 164. The distinction between champerty, which is the sale of the mere right to sue, and the sale of the property,

CHANCELLOR, Lord.[1]

CHARACTER.[2]

CHARITIES and Charitable Use.[3] 3 Abr. 75. As to Roman Catholics, *See* 23 & 24 Vic. c. 134; as to Administration of Charities, id. c. 136, s. 45; Conveyances to Charitable Uses, 24 Vic. c. 39.

CHARTER-PARTY. 3 Ab. 79.

I. Its Nature, Form, Construction of, and Stamp, p. 100.

II. Rights and Obligations of the Shipowner under, p. 101.

III. Rights and Obligations of the Merchant, and Ship-brokers and Agents, p. 101.

IV. Master's Rights and Duties, and of the Stevedore when employed, p. 102.

V. Dissolution of the Contract, p. id.

VI. Action upon, p. id.

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which may be the subject of suit, in the former the right to sue is not by law conveyed; in the latter the property passes, and with it as an incident the right of suit. *Dickenson v. Burrell*, M. R.; 1 L. R. E. 337. A legatee, too poor to sue, assigned his legacy for less than it was worth to a person, who bought it for the purpose of enforcing payment by suit, does not amount to champerty or maintenance. *Tyson v. Jackson*, 30 Beav. 384. Where a plaintiff having a good title to property enters into a contract with a person to guarantee him against the costs of a suit to recover the property, he shall have a portion of the property recovered; this is maintenance, but it does not disentitle plaintiff from recovering in the suit. *Hilton v. Woods*, L. R. 4 Eq. 432. *See* 28 L. J. Q. B. 32; 29 id. 128.

[1] The Lord Chancellor, though "Chancellor of Great Britain," has only certain statutory powers in Scotland, which are not of a judicial nature. *Stuart v. Bute* (*Marquis*), 9 H. L. Cas, 440.

[2] In an action for fraudulently representing that a trader was trustworthy, a witness may be asked what was the reputation of the trader on a certain day, as to his trustworthiness. *Sheen v. Bumpstead*, 1 H. & C. 358; 2 *id.* 193, 32 L. J. Exch. 124; 8 L. T. N. S. 832,—Exch. Cham.

A. was charged with assaulting a constable in the execution of his duty. The prosecutor, a policeman, was about to apprehend him upon a suspicion of having committed a felony. To show that the prosecutor was acting in the execution of his duty, he was asked, "What did you know had been A.'s character?" to which he answered, "I knew him to be a very bad character." In answer to questions from the counsel for the prosecution, the prosecutor stated a particular instance of the prisoner's having been charged:—*Held*, although the constable might state generally that he had a suspicion of his having committed a felony, he could not be asked in chief the grounds of such suspicions. *Reg. v. Tuberfield*, 10 Jur. N. S. 1111; 34 L. J. M. C. 20; 11 L. T. N. S. 385.—C. C. R. *See* 17 & 18 Vic. c. 125, ss. 22 to 25; 28 & 29 id. c. 17; 30 & 31 id. c. 35.

Where a prisoner calls witnesses who give general evidence of good character, evidence of bad character may be adduced by the prosecution to rebut it. But such evidence must be confined to general reputation and individual opinion, as evidence of particular facts is not admissible. *Reg. v. Jas. Rowton*, C. C. R. 13 W. R. 436.

[3] By 26 & 27 Vic. c. 106, every deed or assurance by which any land shall have been demised for any term of years for any charitable use, shall, for all the purposes of the 9 Geo. 2, c. 36; 24 & 25 Vic. c. 9, and 25 & 26 Vic. c. 17, be deemed to have been made to take effect for the charitable use thereby intended immediately from the making thereof, if the term for which such land shall have been thereby demised, was thereby made to commence and take effect in possession at any time within one year from the date of such deed or assurance.

By s. 4 every full and *bonâ fide* valuable consideration, within the meaning of s. 1 of the 24 & 25 Vic. c. 9, which shall consist, either wholly or partly, of a rent or other annual payment reserved or made payable to the vendor or grantor, or to any other person, shall, for the purposes of the 9 Geo. 2, c. 36, be as valid and have the same force and effect as if such consideration had been a sum of money actually paid at or before the making of such conveyance without fraud or collusion.

Further provision made for the enrolment of charitable trust deeds, &c, now rendered void for want of compliance with the first of the above acts. 29 & 30 Vic. c. 57.

I. Its Nature, Form, Construction of, and Stamp.[1]

[1] *Primâ facie*, the law of the place where a contract is made is that which the parties intended, or must be presumed to have adopted, as the footing upon which they dealt, but a contract of affreightment made between a charterer and owner of the ship, being persons of different nationalities, is to be construed by the law of the nation of the ship. *Lloyd v. Guibert*, 6 B. & S. 100; 1 L. R. Q. B. 115; 35 L. J. Q. B. 74; 13 L. T. N. S. 602, Ex. Ch.

Where a charter-party stipulated that the ship, then being at A., should proceed to B., and there take in her cargo, and proceed to X., and there was the usual exception of dangers of "seas, rivers, and navigation, &c.:"—*Held*, that the preliminary transit from A. to B. was a portion of the voyage contracted for, and that the exception applied to that transit. *Barker v. McAndrew*, C. P. L. J. N. S. 191.

By a memorandum of charter-party, it was agreed "that the vessel called the Martaban, now in the port of Amsterdam, being tight, &c., shall, with all possible despatch, proceed direct to Newport, and there load a cargo of coals, and therewith proceed to Hong Kong, and deliver the same alongside any craft, floating depôt, or pier the consignee shall name:"—*Held*, in an action by the shipowner against the charterer for not loading a cargo, that it was a condition precedent that the ship should, at the time of making the charter-party, be in the port of Amsterdam. *Behn v. Burness*, 9 Jur. N. S. 620; 32 L. J. Q. B. 204; 8 L. T. N. S. 207, Ex. Ch.

Under a charter to bring home "a complete cargo of sugar in cases or other lawful merchandize, with sufficient bags for stowage," the obligation for taking bags for stowage does not attach to a cargo of cotton. *Duckett v. Satterfeld*, 3 L. J. N. 68.

By a charter-party made at Liverpool for a voyage from L. to Sydney, the charterer agreed to "pay for the use and hire of the ship in respect of the voyage 1550*l.* in full, on condition of her taking a cargo of not less than 1000 tons weight and measurement;" this means 1000 tons of a cargo of goods in the ordinary proportions of the port of lading; viz., one-third weight and two-thirds measurement. *Pust v. Dowie*, 33 L. J. Q. B. 172, Ex. Ch.

In a charter made at New York, between British subjects, a vessel was described as "the A 1 Br. brig Hannah Eastee, of Liverpool:"—*Held*, a warranty by the owners that the vessel was at the time classed A 1 at Lloyd's, in London. *Routh v. MacMillan*, 2 H. & C. 750; 10 Jur. N. S. 158; 33 L. J. Ex. 38. *Behn v. Burness*, 9 Jur. N. S. 620; 32 L. J. Q. B. 204; 11 W. R. 496; 8 L. T. N. S. 207, Ex. Ch.

Charter-party of a ship at freight 3*l.* 10*s.* per ton; "the ship to have a lien on cargo for freight." The charterer shipped as part of the cargo his own goods, under a bill of lading. "Freight for the said —— as per charter-party." Most of the cargo was shipped by other merchants under bills of lading, the freight named being less than 3*l.* 10*s.* Charterer indorsed his bill of lading to defendants for value, who had no notice of the contents of the charter-party. The goods not shipped by charterer were delivered according to bills of lading:—*Held*, that the shipowner had no lien on the goods shipped by charterer for the deficiency of freight; and that the words of the bill of lading were only sufficient to incorporate in it the amount of freight per ton. *Fry v. Chartered Mercantile Bank of India, &c.* 1 L. R. 1 C. P. 689; 35 L. J. 305. *See Tamvaco v. Simpson*, 35 L. J. C. P. 196.

By a charter made in London between plaintiff, a shipowner, and defendants, Liverpool merchants, it was agreed that plaintiff's ship should sail to Bombay for a cargo of cotton or wool, and, having loaded, should proceed to London or Liverpool as ordered, and deliver the same on being paid freight as follows, viz., "75*s.* per ton of fifty cubic feet delivered for cotton or wool." It is the practice at Bombay to compress the bales of cotton before shipment by machinery into the smallest possible space, and upon being unloaded at the port of discharge they expand considerably. Plaintiff claimed to be allowed to have the freight calculated according to the measurement of the bales after being unloaded, and brought his action to recover a balance of freight still due to him according to this mode of calculation:—*Held*, that the freight was payable on the measurement before shipment. *Buckle v. Knoop*, Ex. Ch. 36 L. J. 223; 2 L. R. Ex. 125.

A charter-party was for "a full and complete cargo of cotton in press-packed bales, with sufficient sugar in bags as ballast." There was the usual exception, "restraint of princes, fire, &c." On the 1st of June a larger portion of the cargo was on board, and some more alongside, for all of which the master had given bills of lading, when a fire occurred, the ship was scuttled and the damaged cargo sold, the part alongside was forwarded by the master in another bottom, at higher freight. The ship was repaired by the 30th July:—*Held*, the charterer was bound to supply the remainder of the cargo. *Jones v. Holm*, 2 L. R. Ex. 325. *Bannister, v. Breslauer*, 2 L. R. C. P. 497; 36 L. J. 195.

Snow-storm not an accident beyond charterer's control within the usual exceptions. *Fenwick v. Schmalz*, 3 L. J. N. 58; 37 L. J. C. P. 78.

Defendants, who were brokers, signed a properly-stamped charter-party as agents for their principals, and then, at the request of the owner of the ship, signed a guarantee "for the due fulfilment of same":—*Held*, that this document was sufficiently stamped with a sixpenny stamp. *Rein v. Lane*, 37 L. J. Q. B. 81; 1 L. R. Q. B. 144.

II. Rights and Obligations of the Shipowner.[1]

III. Rights and Obligations of the Merchant, Shipbrokers, and Agents.[2]

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[1] In the contract of a shipowner to carry goods shipped on board his vessel, there is no implied condition that the vessel shall be seaworthy. *Schloss v. Heriot*, 14 C. B. N. S. 59; 32 L. J. C. P. 211; 11 W. R. 596; 8 L. T. N. S. 246.

A shipowner who charters his vessel to another, but not so as to give up possession, is liable to a breach of contract contained in a bill of lading signed by the master. *The St. Cloud*, 1 B & L. 4.

If in the course of a voyage a ship carrying cargo is damaged by perils of the seas, the shipowner intending to carry the cargo to its destination is entitled to a reasonable time for repairing his ship or for transshipping. *Cargo ex Galam*, 2 B. & L. 167, P. C.

If he is prevented from carrying the cargo to its destination by the act or default of the owner he has a possessory lien on the cargo for the entire freight and for contribution to any general average expenses incurred. (*Id.*) *The Hamburg*, 2 B. & L. 253, P. C.

Where a full cargo is guaranteed by charterer, and an insufficient cargo is supplied, a breach of contact occurs, and the damage arises immediately upon the failure to load a full cargo, and the right to recover for the breach is not affected by the subsequent loss of the ship. *Carr v. Wallachian Petroleum Co.* 1 L. R. C. P. 235; 35 L. J. C. P. 314.

It is no answer to an action by a shipowner against the charterer to recover freight, that, by the fault of the master and crew, and their negligent and unskilful navigation of the vessel, the cargo (coal) was damaged so as upon arrival at the port of discharge to be then there of less value than the freight, and that the charterer abandoned it to the shipowner. *Dakin v. Oxley*, 15 C. B. N. S. 646.

When the charter does not amount to a demise the owners remain in possession of the ship by their servants, and they continue liable for safe stowage, and the employment of a stevedore makes no difference. *Sandeman v. Scurr*, 2 L. R. Q. B. 86; 36 L. J. Q. B. 58.

It is the duty of the owner of a vessel to stow the cargo with as much skill as a competent stevedore can do. *Anglo-African Company v. Lamzed*, 1 H. & R. 216; 1 L. R. C. P. 226; 12 Jur. N. S. 294; 35 L. J. C. P. 145; 13 L. T. N. S. 796.

[2] A contract to guarantee a gross freight home not less than 900*l.*, and less is only obtained, defendants are liable for the amount of the deficiency, notwithstanding the ship and cargo were totally lost on the voyage. *Carr v. Wallachian Petroleum Company*, 1 L. R. C. P. 636; 35 L. J. 314.

To an action by a shipowner against charterer for balance of freight, defendant pleaded an allowance in account between the captain and the agent of both plaintiff and defendant of a sum expended by the agent in respect of a ship's disbursement, which allowance the captain protested against on the ground that, under the circumstances, it was a disbursement for the charterer:—*Held*, that the allowance did not operate as a payment *pro tanto* by the charterer; that it was a disbursement by the agent on behalf of the owner for which he was liable, though he might have an action for it against the charterer. There was no assent to treat the debt due to the agent as a settlement of account between the plaintiff and defendant. *Roberts v. Shaw*, 4 B. & S. 44. *Coulthurst v. Sweet*, L. R. 1 C. P. 649.

Charterer contracted to ship "a full and complete cargo of sugar in cases, or other lawful merchandise, with sufficient bags for stowage," freight, &c., "and for other produce a rate proportionate to sugar in-casks, with sufficient bags for broken stowage." A full cargo of cotton was shipped, and sixty tons of stone for ballast. In an action by the shipowner for not loading a full cargo, a custom was proved that 928 lbs. of cotton were to be taken as equal to a ton of sugar:—*Held*, the charterer was not bound to ship sugar in bags instead of ballast, and the jury were right in finding that a full cargo was loaded. *Duckett v. Satterfeld*, L. R. 3 C. P. 227; 37 L. J. 144.

A shipowner contracts by a charter-party to take on board a cargo to be furnished by a merchant at a particular port; his ship goes there and loads a part of the cargo, when finding that he had miscalculated the depth of water, he drops down to deeper water, and in so doing is stranded, and part of the cargo is damaged; he decides to unship the cargo, and proceeds to unship a portion of it into lighters, without indicating that he intends to take it back:—*Held*, that he thereby made his election, and could not after that sue for not supplying a cargo. *Strugnell v. Friedrichsen*, 9 Jur. N. S. 77.

Action on charter-party. Charterer bound himself to supply, for the return voyage, "a full and complete cargo of sugar or other lawful produce;" rates fixed; broken stowage to pay as customary. As much timber was shipped as the ship could hold, but she could have carried several tons of broken stowage, which was not supplied, and she had to take in ballast:—*Held*, the question whether this was a complete cargo was one for the jury, and further that they were right in finding in the negative, distinguishing this case from *Moorson v. Page*, 4 Camp. 103. *Cole v. Meek*, 15 C. B. N. 795; 33 L. J. C. P. 183. *McAndrew v. Chapple*, 1 L. R. C. P. 643; 35 L. J. C. P. 281.

Action on charter-party for demurrage. Defendant was to load with all convenient speed (except in cases of riot, strikes, or

IV. Master's Rights and Duties, and of a Stevedore.[1]

V. Dissolution of Contract.[2]

VI. Action upon.[3]

CHEAT. *See* False Pretences; Forgery.

CHILDREN, Custody of.[4] *See* 2 & 3 Vic. c. 54; Destitute, 20 & 21 *id.* 48.

Employment of. *See* 25 & 26 Vic. c. 8.

as to Employment in Factories. *See* 30 & 31 Vic. c. 103; 31 & 32 *id.* c. 51.

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any other accidents beyond his control which may prevent or delay her loading):—*Held*, that a snow-storm was not an accident within the meaning of the exception, and that plaintiff was entitled to recover. *Fenwick v. Schmatz*, 3 L. R. C. P. 313; 37 L. J. 78; 18 L. T. 7: 16 W. R. 481.

[1] By a charter entered into between the plaintiff, the owner, and the defendant, the charterer of the ship E. M., it was agreed that the ship should proceed to P., and there load "a full and complete cargo of cotton," with a certain amount of sugar as ballast. The ship proceeded to P., and after a portion of the cargo had been loaded, and while another portion was in a lighter lying alongside ready for loading, the ship caught fire accidentally, and the portion of the cargo on board was so injured that the master necessarily sold it. He forwarded the portion alongside to its destination by a different ship:—*Held*, that the defendant was not exonerated by the circumstances from his obligation to complete the loading of a full and complete cargo. *Jones v. Holm*, 34 L. J. Ex. 192; 2 L. R. Ex. 325.

The master of a vessel driven into a foreign port, in distress, is not bound to transship the cargo. *The Hamburg*, 9 Jur. N. S. 440; 32 L. J. Adm. 161; 11 W. R. 547; 8 L. T. N. S. 175.

A shipbroker employed by a shipowner has no general authority as will enable him to charter the ship in a manner contrary to instructions expressly given to him by the owner, although such instructions have not been communicated to the parties dealing with him. *Spaight v. Beyerlieb*, 9 L. T. N. S. 31, Ir. Ex. Ch.

Charterer's stevedore means when one is appointed; if none appointed, master must load ship properly according to terms of charter. *Anglo-African Company v. Lamzed*, 35 L. J. C. P. 145; 1 L. R. C. P. 227.

[2] A charterer, whose cargo has been damaged by the fault of the master and crew, so as, upon arrival at the port of discharge, to be worth less than the freight, is not entitled to excuse himself from payment of freight by abandoning the cargo to the shipowner. *Dakin v. Oxley*, 15 C. B. N. S. 646; 10 Jur. N. S. 655; 33 L. J. C. P. 115; 10 L. T. N. S. 208.

[3] On an allegation that damage to cargo originated from defective stowage, and heat and fermentation arising from the cargo being stowed in too close conjunction with other cargo, the parties must establish affirmatively that the cargo on its arrival at its port of destination was in a damaged condition; and the onus then falls on the ship to prove that the original stowage was good, and that the perils of the sea subsequently occurring created the damage. *The Alexandra*, 14 W. R. 466; 14 L. T. N. S. 742, Adm.

Evidence of usage of the construction of the contract that the freight was payable on the measurement before shipment is admissible as not contradicting the terms of the charter-party. *Buckle v. Knoop*, 36 L. J. Ex. 49.

A charter-party, by which it was agreed that the cargo should be loaded and discharged with all despatch, contained the following clause:—"The charterer's liability on this charter to cease when the cargo is shipped (provided the same is worth the freight on arrival at port of discharge), the captain having an absolute lien on it for freight, dead freight, and demurrage, which he or owner shall be bound to exercise." The charterers having shipped a cargo worth the freight on arrival at the port of discharge:—*Held*, in an action on the charter-party, that they were protected by the above clause from liability to the shipowner for not loading the ship in due time according to the charter. *Bannister v. Breslauer*, 36 L. J. C. P. 195.

A court of equity cannot decree the specific performance of a charter-party, but it can restrain the parties from employing the ship in a manner inconsistent with its terms. *Le Blanch v. Granger*, 35 Bea. 187.

[4] When a marriage has been dissolved on the ground of the misconduct of the husband, the court, although it may deem him unfit to have the care of the children of the marriage, will not deprive him of his legal right to their custody in favour of the wife if she also is unfit to be intrusted with them. In such a case it will give the custody of the children to some third person. *Chetwynd v. Chetwynd*, 35 L. J. M. & P. 21.

The court, in exercising the power given

CHILD, Concealment of Birth of.[1] *See* 24 & 25 Vic. c. 100, s. 60.

CHOSE in Action. 3 Ab. 98.[2]

CHRISTMAS-DAY. 2 Ab. 400. *See* Bills of Exchange.

CHURCHES and Chapels. 3 Ab. 100. *See* Burial; Church-Rates, p. 104; Churchwardens; Parish; Pews; Vestry. *See* as to Building and Endowing, 58 Geo. 3, c. 45, s. 59, *id.* c. 134; 18 & 19 Vic. c. 127; 19 & 20 *id.* c. 55; transfer of powers of Church Commissioners to the Ecclesiastical Commissioners. 28 & 29 Vic. c. 69, amends and extends 17 Geo. 3, c. 53, 21 Geo. 3, c. 66, 7 Geo. 4, c. 66, and 1 & 2 Vic. c. 23, for repairing, rebuilding, and acquiring houses for the residence of beneficed clergymen. As to Vestry Meetings, *See* 13 & 14 Vic. c. 57. Boundaries of Church Property, 2 & 3 Wm. 4, c. 80.

I. As to Churches.[3]

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to it by 22 & 23 Vic. c. 61, s. 5, of altering marriage settlements, will take into consideration the fortune of the wife, the ability of the husband and the conduct of the parties. (*Id.*)

[1] To endeavour to conceal the birth of a child by a secret disposition of the dead body within the 24 & 25 Vic. c. 100, s. 60, must be by putting it into some place where it is not likely to be found. Placing it in an open box in the prisoner's bedroom, and afterwards, on inquiry by the medical man, informing him that the child was in the box, where it was found, is not a secret disposition. *Reg. v. Sleep*, 9 Cox, C. C. 559. *See Reg. v. Clarke*, 4 F. & F. 1040. The statute relates to the *secret* disposition of the dead body. *R. v. May*, 10 Cox, C. C. 448; 16 L. T. 362. *R. v. Clarke*, 48 L. J. 1040.

On an indictment for concealing the birth of her child it appeared that the prisoner had been confined of a child which had not attained to seven months from conception, it had never lived, and was slightly malformed, it was left to the jury to say whether the offspring had so far matured as to become a child, or was only a fœtus, or the unformed subject of a premature marriage. *Reg. v. Hewitt*, 4 F. & F. 1101.

Section 60 applies to the concealment of the dead body of the infant or conviction for the concealment of the body of a living child who afterwards died, was quashed. *Reg. v. Jane May*, C. C. R.; 16 L. T. 362.

A fœtus not bigger than a man's finger, but having the shape of a child, is a child within the statute. *Reg. v. Colmer*, 9 Cox, C. C. 506.

[2] An assignee of a chose in action which is not assignable at law takes subject to all equities. *Roll v. White*, 31 Beav. 520. On appeal, 9 Jur. N. S. 343; 7 L. T. N S. 586—C.

Where a debt is assigned with the usual power of attorney to sue in the assignor's name, there is an implied covenant by the assignor not to thwart the remedy of the assignee against the debtor, and it is a breach of such covenant for the assignor to release the debtor from an arrest under bailable process at the suit of the assignee. *Gerard v. Lewis*, 36 L. J. C. P. 173; *Watson v. The Mid-Wales Railway Company*, 34 L. J. C. P. 285; *Thornton, In* re 13 L. T. N. S. 516—Ir.

An acknowledgment to wife during coverture that the defendants held money to her use creates a chose in action, which if not reduced into possessive by the husband—belongs to the wife's administrator. *Steel v. Perrens*, 37 L. J. Q. B. 233.

Lloyd's bonds are issued for the purpose of money being raised upon them, and after money has been so advanced in an action by the assignee the company cannot set up a secret arrangement between the obligee and them that they should not be enforced. *Dickson v. The Swansea Vale and Neath and Brecon Junction Railway Company*, 3 L. J. N. 237. *Blackmore v. Yates*, 2 L. R. Ex. 225; 36 L. J. 121.

Notice of the assignment of a debt due from a company in course of winding-up, given by the assignee to the official liquidator, perfects in equity the title of the assignee, and takes the debt out of the order and disposition of the assignor. *In re Breech-Loading Armoury Company* (*Wragg's case*), 2 L. R. 5 Eq. 284.

[1] A church is not a house within the Metropolis Local Management Acts, 18 & 19 Vic. c. 120; 25 & 26 *id.* c. 102; as to the cost of paving. *See Angel v. Vestry of Paddington*, 3 L. J. N. 141.

The Church Building Acts do not apply to a parish which has already been the subject of private legislation. *Fitzgerald v. Champney*, 30 L. J. Ch. 777.

The freehold of a church, including chancel and churchyard, is in the rector, but the right to the corporal possession is in the spiritual incumbent after induction; and therefore a lay rector has not, as against the vicar, any right to the possession or control of the chancel. *Griffin v. Dighton*, 33 L. J. Q. B. 29; *Churton v. Frewen*, 35 L. J. 692; 5 B. & S. 92.

The control of the church-bells belongs to the incumbent. *Daunt v. Crocker*, 37 L. J. Ecc. Cas. 1—Arches.

The herbage growing in a churchyard

II. As to Chapels.[1]

CHURCH-RATES.[2]

I. Of the making of the Rate, p. 105.
II. What Property is Assessable, p. 105.

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belongs in the absence of a grant to the lay impropriator. *Greenslade v. Darby*, 37 L. J. Q. B. 137.

When a church has not been entirely destroyed or pulled down, there is no need of reconsecration. *Parker v. Leach*, 12 Jur. N. S. 911; 15 L. T. N. S. 370—P. C.; 36 L. J. 26; 1 L. R. 312. *See* 30 & 31 Vic. c. 133, s. 12; *Adlam v. Colthard*, 36 L. J. Ecc. 14.

Where a clergyman had made alterations in the internal arrangements of his church without a faculty, and proceedings under this act were taken to compel him to restore the church, and on the suggestion of the judge, the parties agreed that the archdeacon of the district should inspect the church and report what should remain and what be restored, the court is bound to carry out the report, unless it contains some glaring misstatements of facts, or some erroneous conclusions of law. *Sievekking v. Kingsford*, Arch. 36 L. J. Ecc. Ca. 1; 15 L. T. 300.

The ordinary has power to grant a faculty for a private vault in the chancel of the church, although there never had been a right of burial in or near the church, but it is a power which should only be exercised under very exceptionable circumstances; and the incumbent has a *persona standi* to oppose the grant. But as the ordinary has no power to compel the incumbent to perform the burial-service on unconsecrated ground, a faculty will not be allowed to issue where the only access to the vault was from unconsecrated ground outside the church, until that access was set apart and consecrated for the purpose. *Rugg v. Kingsmill*, 2 L. R. 2 P. C. 59; 18 L. T. 94.

The south door of a church, which was equally large as the west door, and which for many years past had been the accustomed one for placing notices upon:—*Held*, to be the proper one for that purpose, although more persons were in the habit of using the western door for entrance and exit, the western door having only been opened within the last five years. *Edwards v. Hatton*, 1 L. R. Ad. & Ecc. 21.

[1] The trustee of a charity is not authorised by the Church Building Acts to convey to the commissioners the private chapel of a charitable foundation held as a trustee for the benefit of the charity. *Attorney-General v. Manchester* (*Bishop*), 2 L. R. Eq. 436; 15 W. R. 673; 15 L. T. N. S. 646.

Acts of user and reparation from time immemorial will support a prescriptive title in the lord of a manor to the exclusive use and occupation of a private chapel annexed to a parish church. *Churton v. Frewen*, 2 L. R. Eq. 634; 12 Jur. N. S. 879; 35 L. J. Chanc., 692; 14 L. T. N. S. 846.

A district formed under 59 Geo. 3, c. 134, and called a consolidated chapelry, is governed by the same regulations as a district formed under 58 Geo. 3, c. 45, and called a district parish. *Jones v. Gough*, 11 Jur. N. S. 251; 12 L. T. N. S. 31; 2 *Moore*, P. C. C. 1.

The voluntary relinquishment of fees required by 19 & 20 Vic. c. 104, s. 12, may be made without the execution of any written instrument. *Id.*

Sect. 9 of the 8 & 9 Vic. c. 70, supersedes the necessity of the enrolment in chancery of the name, boundaries, &c., of an ecclesiastical district or chapelry, as required by the 59 Geo. 3, c. 134, s. 6. *Reg. v. South Weald* (*Overseers*), 40 Jur. N. S. 1099; 33 L. J. M. C. 193; 10 L. T. N. S. 498—Q. B. *See Rugg v. Kingsmill*, 1 L. R. Ecc. 343; 36 L. J. Ecc. Cas. 17.

Although the incumbent of a parish has a right to object to the consecration of a building within his parish, if the bishop overrules such objection, and proceeds to consecrate the building, such consecration will not be invalid by reason of the dissent of the incumbent. *Bishop of Winchester v. Rugg*, 35 L. J. c. 11.

[2] The 31 & 32 Vic. c. 109, having abolished the compulsory payment of church-rates, except as relates to those due, only a few of the principal cases are referred to.

By sect. 1, after 31st July, 1868, no suit whatever is to be instituted in any court or before any justice to compel payment.

Sect. 2 excepts rates in pursuance of any general or local acts called church-rates as applicable to secular purposes.

Sect. 3 provides for enforcement of payments when money is due on the security of such rates.

Sect. 4. Church-rates already made to be collected and recovered as heretofore.

Sect. 5. Act not to affect enactments in local acts, &c., where rates are made for purposes therein named; nor by sect. 6: Vestries making rates.

By sect. 7: Trustees and persons under incapacity may subscribe to voluntary rates.

By sect. 8: No person who makes default in payment shall be entitled to inquire into or object to a vote in respect of the expenditure of the monies received.

By sect. 9: Power is given to appoint trustees to accept bequests, donations, &c.; the incumbent to be chairman to trustees.

III. Proceedings before Justices for the Recovery of the Rate.

I. Of the Making of the Rate.[1]

II. What Property is Assessable.[2]

III. Proceedings before Justices for Recovery of the Rate.[3]

CHURCHWARDENS.[4] 3 Ab. 114.

By sect. 10: "Ecclesiastical purposes" shall mean building, enlarging, repairing, &c., any church or chapel, parish, any ecclesiastical district, chapelry, or place in which any person has the exclusive cure of souls.

[1] In making a church-rate, the parishioners are not bound to adopt the valuation made by an assessment committee under 25 & 26 Vic. c. 103. *Barnes v. Grant*, 12 Jur. N. S. 168; 35 L. J. Ex. 9; 13 L. T. N. S. 688.

Irregularity in proceedings of vestry not sufficient to vitiate the rate. *Tiarks v. Hutton*, 35 L. J. Ecc. C. 11.

Where a vestry meeting is held for the purpose of passing a church-rate, and the churchwardens produce an estimate containing items alleged to be illegal, such as an item for warming the church, the chairman ought to allow the question of these items, and of the quantum of the rate, to be first disposed of, before the motion for a church-rate is put. *Richards v. Birley*, 10 L. T. N. S. 142—P. C.

The judgment of the Q. B. in *Gosling v. Veley*, 12 A. & E. 406, that a resolution by the majority present at the vestry-meeting, that no church-rate should be made, is inoperative, and if the minority agree on a rate after such resolution, the rate so made will be valid, was reversed in the House of Lords, 4 H. L. C. 811.

Sect. 70 of 58 Geo. 3, c. 45, which authorises rates for the repairs of district churches, includes rates "to be raised within the district, in like manner as in case of repairs of churches by parishes," for the expenses necessary for the due performance of the offices of the church as well as for the repairs of the fabric. *Adams, In re*, 2 B. & S. 339; *see Reg. v. Surrey Trustees*, 32 L. J. M. C. 153. *Gough and Cartwright v. Jones*, 10 Jur. N. S. 185; 9 L. T. N. S. 610. *Reg. v. Surrey (Justices)*, 7 L. T. N. S. 822; *Reg. v. Roberts*, 32 L. J. M. C. 153, c. 3 B. & S. 495.

[2] If valuable property is not rated, or over or underrated, the rate is invalid; but minor errors, inevitable in a large parish with numerous ratepayers, will produce no effect on the rate. The 7 & 8 Will. 3, c. 34, passed for the relief of Quakers, does not expressly either take away or retain the jurisdiction of the ecclesiastical courts against them on the subject of church-rates, and only gives the justices jurisdiction to enforce an undisputed rate, payment of which is refused on conscientious scruples. *Gray v. Backhouse*, 9 Jur. N. S. 54.—Durham Consistory Court. In a suit for church-rates, the defendant pleaded that in his case and in many others named the assessment was too low, and that the rate was invalid: —*Held*, on a motion to reject defendant's allegation, that the court would not do so; reserving the question whether if at the hearing it appeared that defendant was not aggrieved, the court would on his application pronounce against the rate. *Edwards v. Hatton (Archdeacon)*, 11 Jur. N. S. 471. See also *Barnes v. Grant*, 1 L. R. Ad. & Ecc. 37.

[3] A parishioner having been summoned before the magistrates of his parish, under 53 Geo. 3, c. 127, for a non-payment of a church-rate under 10*l.*, informed them that he disputed the validity of the rate; the magistrates, nevertheless, made a verbal order upon him for payment; but on a subsequent day withdrew the order, and informed him of such withdrawal by letter. The churchwardens then instituted proceedings to enforce the rate; the defendant appeared under protest: — *Held*, that the matter was not *res judicata*, and that the ecclesiastical court had jurisdiction to enforce the rate. *Linnell v. Gunn*, 1 L. R. Ecc. 363; 36 L. J. Ecc. Cas. 23,—Arches. To take away the summary jurisdiction of justices in enforcing a church-rate under 10*l.*, a general objection in the validity of the rate is not sufficient; the point of law raising the objection should be distinctly stated, and the justices are judges of its *bona fides*. *Reg. v. Blackburn*, Bail Court, 32 L. J. N. S. M. C. 41. *Mannering, ex parte*, 2 B. & S. 431. *May, ex parte*, 2 B. & S. 426. To oust the justices of their jurisdiction to adjudicate upon a church-rate summons, the party must decline to accept their adjudication. *Reg. v. Knox*, 32 L. J. M. C. 257; 8 L. T. N. S. 330.

[4] By 29 & 30 Vic. c. 113, s. 12, in any parish the same person may hold jointly the offices of churchwardens and overseers.

I. Election of.[1]

II. Rights and Liabilites of.[2]

CHURCH Discipline Act.[3] *See* 3 & 4 Vic. 86; 14 & 15 *id.* 99.

[1] The ratepayers of a district parish established under 58 Geo. 3, c. 45; 6 & 7 Vic. c. 37, and 19 & 20 Vic. c. 104, have a right to vote at elections of churchwardens for the original or mother parish. *Reg. v. Exeter (Archdeacon)*, 11 W. R. *Reg. v. Perry*, 30 L. J. Q. B. 141; 3 E. & E. 640. A custom in a parish regulating the nomination of churchwardens, which was contrary both to the common law and canon law mode of election, held to be good in law, and supported by the evidence, which showed a substantial adherence to the custom, except in one instance, in which it appeared to have been slightly departed from. *Bremner v. Hull*, 35 L. J. 332; C. P. 1 L. R. C. P. 744. A district which, by order in council, under 59 Geo. 3, c. 134, s. 16, is assigned to a chapel in a parish, becomes a separate parish for all ecclesiastical purposes, but continues a part of the parish for other ecclesiastical purposes, and therefore the inhabitants of the district are entitled to vote in the election of churchwarden for the parish. *Reg. v. Stevens*, 3 B. & S. 333; 32 L. J. Q. B. 90.

[2] By immemorial custom, churchwardens may be bound to pay visitation fees to the registrars of the archdeacon. *Shepherd v. Payne*, 16 C. B. N. S. 132; 10 Jur. N. S. 540; 33 L. J. C. P. 158; 10 L. T. N. S. 193. In an action for money received by five churchwardens against one, who, wrongfully claiming to be churchwarden of a township, had therein collected money due under a church-rate, it appeared that one of the churchwardens had not made any declaration under 5 & 6 Wm. 4, c. 62, s. 9, but his predecessor, who had made a declaration for the previous year, was willing to be substituted: — *Held*, that on such substitution being made, it was no valid objection that such predecessor had made no fresh declaration, inasmuch as he remained in office under his declaration till he had a properly constituted successor. *Bremner v. Hull*, 1 L. R. C. P. 748; 11 Jur. N. S. 648; 35 L. J. C. P. 332; 14 W. R. 964; 15 L. T. N. S. 352.

Where there are two churchwardens, one cannot sustain a suit for substraction of church-rates, without the concurrence and joinder of his co-churchwarden. *Fry v. Treasure*, 2 Moore, P. C. C. N. S. 539. One of several churchwardens may be sued separately in the Ecclesiastical Court, as a parishioner and inhabitant, for a breach of the ecclesiastical law. *Adlam v. Coulthurst (Archdeacon)*, 36 L. J. E. Ca. 14; 15 L. T. 635. A *quo warranto* does not lie for usurping the office of churchwarden, the proper course is to apply for a mandamus to the rector to appoint. *In re Barlow*, 30 L. J. Q. B. 270. A churchwarden whose year of office has expired, continues in office till his successor has become churchwarden *de facto*. *Bray v. James*, 31 L. J. M. C. 135; 2 R. & S. 374.

[3] The Court of Arches has jurisdiction over a clergyman for neglecting to perform divine service. *Re Rugg*, 3 L. J. N. 60. The Church Discipline Act requires after the report of the commissioners appointed under the act, shall think fit to proceed against the party accused, articles shall be drawn up, and shall be approved and signed by an advocate practising in Doctors' Commons: — *Held*, that the approval and signature of any barrister practising in the Arches Court will satisfy the statute. *Mouncey v. Robinson*, 37 L. J. Ec. 8 *Semble*, the old rule of the Court of Arches, that a charge could not be established by the uncorroborated testimony of one witness, does not apply to proceedings under this act where the evidence is taken *vivâ voce*. Quære, whether the decision in *Burder v. M'Neil*, 9 Jur. N. S. 1109 (O. S. 1387) not allowing the accused to give evidence will be followed. *Bishop of Norwich v. Berney. Berney v. Bishop of Norwich*, 36 L. J. Ecc. Ca. 10.

Under 3 & 4 Vic. c. 86, s. 3, an allegation that the offence was committed within two years is not essential. *Simpson v. Flamank*, 36 L. J. P. C. 61. The court will not allow an appeal from its decision as to the admission of articles, unless some important principle of law is involved in such decision. *Martin v. Mackonochie*, 36 L. J. Ecc. Cas. 25,—Arches. No appeal is given by 3 & 4 Vic. c. 86, either to the Arches Court, or thence to Her Majesty in council, from the decision of the commissioners, on the regularity or the irregularity of the proceedings before them. *Simpson v. Flamank*, 1 L. R. P. C. 463; 4 Moore, P. C. C. N. S. 385; 16 L. T. N. S. 724.

In a suit against a clergyman for making additions to and variations from the rites and ceremonies prescribed by the Book of Common Prayer in the performance of divine offices, it is necessary to state in the articles with clearness the acts done by him, and the law he has contravened by such acts; but it is not necessary to set out in detail the evidence that will be adduced in proof of them, or the intent with which they were done by him. *Martin v. Mackonochie*, 36 L. J. Ecc. Cas. 25.

There is a legal distinction between a rite and a ceremony. The former consists in services expressed in words; the latter, in gestures or acts preceding, accompanying, or following the utterance of these words. *Martin v. Mackonochie*, 37. L. J. Ecc. Cas. Whatever is expressly prohibited in the Rubric is prohibited altogether, and may not be evaded by any contrivance which, under a different name and appearance, attains the same end. Whatever is expressly ordered by the Rubric must not be evaded

CIRCUITS[1] 3 Ab. 118.

CIRCUITY of Action.[2]

CLERGY. *See* Church Discipline Act; Ecclesiastical Law.

CLERK of the Peace.[3] 3 Ab. 124. *See* the 27 & 28 Vic. c. 65, which provides for the removal for Misconduct.

COAL Mines. *See* Mines, and 25 & 26 Vic. c. 79.

COAL Trade.[4]

CLUB.[5]

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by an illusory or partial compliance. *Id.* Elevation, that is, the raising the paten and also the cup respectively, after the consecration of the bread and wine, for an appreciable time, after which there is a pause before the service is continued, is a ceremony so connected with the repudiated doctrine of transubstantiation, that it is not permissible in the Church of England. *Id.* The amount of kneeling to be employed by the officiating minister is a matter to be regulated by the bishop, in accordance with his discretion. *Id.* The use of incense during the celebration of the communion is a distinct ceremony, additional to and not even indirectly incident to the ceremony ordered by the Book of Common Prayer, and therefore unlawful. *Id.* As the mention of water and the mixing of water with the wine which was introduced into the first Prayer Book, is omitted in the subsequent Prayer Books, it must be held that such mixing is prohibited during the celebration of the Communion. *Id.* Two lights are ordered by the injunctions of Edw. 6, 1547, to be placed on the holy table during the administration of the Communion. *Id.*

This judgment was reversed as to the kneeling and altar lights by the P. C. 4 L. J. N. 290.

The Court of Chancery will not interfere to prevent a congregation of dissenters from adopting a practice which from time to time shall be approved of by the majority of the congregation, so that it does not affect a fundamental point of faith. *The Att.-Gen. v. Gould*, 30 L. J. Ch. 77.

In a criminal suit, the defendant is competent to give evidence, and must submit to be examined. *Bishop of Norwich v. Pearse*, 37 L. J. Ec. Cas. 90. Disobedience to a bishop's notice to perform divine service alternately in two chapelries is an ecclesiastical offence. *Bishop of Winchester v. Rugg*, 37 L. J. Ecc. Cas. 85.

[1] 26 & 27 Vic. c. 122, enables the Queen in council to alter the circuits of judges; on alteration of the circuits, to alter the salaries of clerks of assize, and the number of revising barristers within circuits affected by the alterations. An order was accordingly made, dated November 8, directing that the Northern, the Midland, and the Northern Circuits shall be altered as follows: the County of York, and the county of the city of York, shall be taken away from the Northern Circuit and annexed to the Midland Circuit; and the counties of Leicester and of Rutland, and of Northampton, shall be taken away from the Midland Circuit and annexed to the Norfolk Circuit; and that the alterations shall take effect from the 8th of December, 1863.

[2] To make a defence available on the ground of the avoidance of circuity of action, the damages must necessarily be the same in character and amount. *Speeding v. Young*, 16 C. B. N. S. 824.

[3] A contumacious refusal by a clerk of the peace to record an order of the Court of Quarter Sessions is a misdemeanour in the execution of the office of such clerk within the meaning of sect. 6 of 1 W. & M. c. 21, and for which therefore the justices may discharge him from such office. *Wildes v. Russell*, 35 L. J. 241, sc. 1 L. R. C. P. 722. *See* s. 3, L. J. N. 20.

Such a judgment cannot be impeached on the ground that the justices who had adjudged had a pecuniary interest in the order being recorded which the clerk had so refused to record, nor on the ground that the charges against the clerk had been exhibited at the instigation of the justices who afterwards adjudged him guilty thereon.

[4] A person who purchased coals at the pit's mouth placed them in his own keel, and, from the keel, transferred them for use to his own steamer, is liable to the tax, under 26 and 27 Vic. 33. *Wilson v. Kingston-upon-Hull*, C. P. 14 W. R. 638.

[5] Action by the secretary of an unincorporated club against a member, who was also a member of the committee, for his salary. Verdict for defendant, and rule to enter it for plaintiff, discharged on the ground that, upon the construction of the agreement of hiring plaintiff was to look to the funds of the club, and that upon those failing, members were to contribute in proportion to their shares. *De Vries v. Connor*, 19 L. T. 636. *See Fleming v. Hector*, 2 M. & W. 172.

Where, by the rules of a social club, a certain majority of members at a general

COIN, Colonial. Tenders in, valid. 26 & 27 Vic. c. 74; 29 & 30 id. c. 65.

COLLISION. *See* Navigation; Negligence; Shipping.

COLLUSION. *See* Marriage.

COLONIES, Plantations, and Foreign Dominions of the Crown.

I. Statutes and Legislation, p. 108.
II. Application of English Laws to Colonies, *id.*
III. Rights and Liabilities of Official Persons, p. 109.
IV. Construction of Grants, &c. connected with, *id.*
V. Ecclesiastical Persons, and Jurisdictions over, *id.*

I. Statutes and Legislation.[1]

II. Application of English Laws to Colonies.[2]

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meeting, have power, by their votes, to expel a member — that is, an absolute discretion — but such discretion must not be used capriciously or arbitrarily; and if, as in the present case, the decision has been arrived at *bonâ fide*, without caprice or improper motive, this court will not interfere to reinstate the expelled member. *Hopkinson v. Marquis of Exeter*, 5 L. R. Eq. 63, 266, 17 L. T. 368.

[1] The 26 and 27 Vic. c. 84, confirms acts of colonial legislatures declaring or altering the constitution of such legislatures, or of any branch thereof, or the mode of appointing or electing the members of the same; and *see Dill v. Murphy*, 1 Moore, P. C. C. N. S. 487; 10 Jur. N. S. 549; 12 W. R. 491; 10 L. T. N. S. 170. 26 & 27 Vic. c. 76, prescribes the time at which letters patent shall take effect in the colonies.

The 26 Vic. c. 24, facilitates the appointment of vice-admirals and of officers in vice-admiralty courts in colonies.

The 28 and 29 *id.* s. 63, removes doubts as to the validity of colonial laws, and defines powers of colonial legislatures, and directs mode of proof of colonial laws.

Legislative assemblies in the colonies have, in the absence of express grant, no power to adjudicate upon, or punish for, contempts committed beyond their walls, or to imprison for a contempt committed in its presence, though it may remove the person offending, there is a difference between such an assembly and the English Parliament, or a Court of Record. *Doyle v. Falconer*, 1 L. R. 1 P. C. 328; 36 L. J. 33.

[2] The rights of an alien friend coming into a British colony, are only limited by the particular law of that colony as to his rights in that colony. *Low v. Routledge*, 13 L. T. 421; 1 L. R. ch. 42.

When Englishmen establish themselves in an uninhabited or a barbarous country, they carry with them their own laws, and the sovereignty of their own state. But this was not the nature of the first settlement in India, the settlement there being made for the purposes of trade, without the introduction of the sovereignty of the English crown, or where they are fundamentally opposed to the native laws. For this reason the English law of suicide is inapplicable, and has no force in India among the natives. *Adv.-Gen. v. Surnomoyee*, 8 L. T. N. S. 843; S. C. 9 Jur. N. S. 877, P. C.

The object of the 54 Geo. 3, c. 15, s. 4, was to render the real estates liable for simple contract debts, as land is liable in England for specialty debts; but that a creditor is bound to proceed in respect of the real estate against the person in whom the property is vested. *Bullen v. A'Beckett*, 1 Moore, P. C. C. N. S. 223; 9 L. T. 99.

The 17th section of the Statute of Frauds incorporated into the 7th section of 9 Geo. 4, c. 14, and introduced into the colony of New South Wales by the Colonial Act, 4 Will. 4, No. 17, requires, to make a contract effectual, "that some note or memorandum of the bargain be made." *Williams v. Brynes*, 1 Moore, P. C. C. N. S. 154; 8 L. T. N. S. 69.

Action for money received. Plea, that the defendant was resident in the colony of V., and that the debts were contracted within the colony, and subject to the laws thereof, and that he was discharged from the debts by the insolvent law of the colony. Replication, that the debts sued on were contracted within the colony, and that they were payable in England, and not elsewhere, is valid. *Gardiner v. Houghton*, 2 B. & S. 743.

An insolvency in South Australia will vest in the assignee's pure personalty situate in England to which the insolvent is entitled, if at the time of the insolvency he was domiciled in Australia. *Blithman, In re*, 2

III. Rights and Liabilities of Official Persons.[1]

IV. Construction of Grants, &c. connected with.[2]

V. Ecclesiastical Persons and Jurisdiction over.[3]

L. R. Eq. 23; 12 Jur. N. S. 84; 35 L. J. Chanc. 255; 14 L. T. N. S. 6, R. *Nunes v. Carter*, 36 L. J. P. C. 12; *Banton of Australia v. Flowers*, 35 L. J. P. C. 13.

An adjudication in bankruptcy will not be permitted upon the petition of a person who, having been made insolvent in a colony, has failed to obtain a certificate there, where it is apparent to the court that the object of the adjudication is merely to get a discharge from the claims of the colonial creditors. *Gibson, Ex parte, in re Patrick*, 11 Jur. N. S. 273; 34 L. J. Bank. 31; 12 L. T. N. S. 101, C.

In an action by S. for the value of lost luggage, on voyage from England to the Mauritius:—*Held*, that the liability of the company was to be determined by the *lex loci contractûs*, and not by the French law. *Peninsular and Oriental Steam Company v. Shand*, 11 Jur. N. S. 771; L. T. N. S. 808, P. C.

[1] The governor of a colony is the person entitled to the bounties payable in respect of a seizure of slaves, even though he is absent from the colony at the time of the seizure. *Anon.* 1 B. & L. 148, 32 L. J. N. S. 184.

By the law of Lower Canada, an officer suing on behalf of the public has a right, at his own instance, or on the application of any person interested, to call for the demolition of any work erected without license on the public domain. *Brown v. Guyp*, 10 Jur. N. S. 525; L. T. N. S. 45, P. C.

The chief justice of the Vice-Admiralty Court of Sierra Leone went on leave, after duly appointing a deputy, who died, whereupon her Majesty's advocate, being chief justice in the colony during the absence of the chief justice, with the concurrence of the acting governor, appointed N. to be deputy judge:—*Held*, duly appointed. *Rolet v. Reg.* 1 L. R. P. C. 198.

[2] A license to depasture stock is in law a demise of the land to which the ordinary rights of lessee attach. *Falkland Islands Company v. Reg.* 9 Jur. N. S. 807; 11 L. T. N. S. 9, P. C.

In a proceeding against the colonial government of Sydney, for not granting an allotment of land pursuant to contract, it was proved that the governor, in order to induce D. to settle there, promised him a grant of land at W., that D. gave up his claim to an allotment there in consideration of a promise of a grant of an allotment at H., which latter was not carried out:—*Held*, not necessary to prove that D. had settled in the colony, the agreement implying only that he should settle when the grant was made. *Robertson v. Dumaresque*, 10 L. T. N. S. 110; 13 W. R. 280, P. C.

As to right to wild animals on lands granted, *see* 2 Moore, P. C. N. S. 266.

A *scire facias* to repeal or revoke grants or charters of the Crown, must be founded on a "record." The grant of waste lands by the governor of the colony, though made under the seal of the colony, not being enrolled, is not a record, and therefore *scire facias* will not lie. *Reg. v. Hughes*, 1 L. R. App. P. C. 81; 35 L. J. 23.

[3] 26 & 27 Vic. c. 121, establishes the validity of acts performed in the Crown's dominions abroad by clergymen ordained in foreign parts, and extends the powers of colonial legislatures with respect to such clergymen.

As no ecclesiastical tribunal or jurisdiction is required in a colony or a settlement where there is no Established Church, the ecclesiastical law of England cannot be treated as part of the law which settlers carry with them from the mother country. *Natal (Bishop) In re*, 3 Moore, P. C. C. N. S. 115.

Where there is an independent legislative assembly in a colony, there is no power in the crown, by virtue of its prerogative (without the provisions of a statute of the Imperial Parliament), to establish a metropolitan see or province, or to create an ecclesiastical corporation, whose status, rights, and authority, the colony can be required to recognise. *Natal (Bishop), In re*, 2 Moore, P. C. C. N. S. 115.

The crown has no power to confer any jurisdiction or coercive legal authority upon the metropolitan over a suffragan bishop, or over any other person in a colony. *Id.*

The position of the Church of England in a colony which has an established legislature, and where no church is established by law, is that of a voluntary association. *Colenso v. Gladstone*, 3 L. R. Eq. 1; 12 Jur. N. S. 971; 36 L J. Chanc. 2.

The jurisdiction of the bishop of a see erected in such a colony by letters-patent rests only upon compact, and is to be enforced through the lay tribunals, from which an appeal lies to the sovereign in council. *Id.*

A coercive jurisdiction is not an essential function of such a bishop.

A fund had been formed, and vested in trustees, for the endowment of bishoprics of the Church of England in the colonies. The plaintiff had been appointed bishop, and his see created, by letters-patent, in a colony possessing at the time a legislative constitution. He consequently had no coercive jurisdiction:—*Held*, that he was nevertheless entitled, upon a bill filed by him against the trustees, to payment of his salary out of the fund. *Colenso v. Gladstone*, 2 L. R. Eq. 1, 971; 36 L. J. Chanc. 2, R.

COMMON, Rights of. And *see post* Inclosure. 1 Ab. 143. *See* Elton on Common and Waste Lands, with Special Reference to the Law of Approvement. As to improvements of Commons near Metropolis, *see* 29 & 30 Vic. c. 122.[1]

COMMON Informer.[2] *See* Penal Action.

COMMONS, House of.[3] *See* Election; Parliament; Privilege.

A charge of heresy or other grave misconduct would, if substantiated, have constituted a complete answer to the bill. *Id. Long v. Cape Town (Bishop)*, 1 Moore, P. C. C. N. S. 411, and *Natal (Bishop), In re*, 3 Moore, P. C. C. N. S. 115.

A clerk in orders officiating as a minister of the Church of England in a colony, was nominated to a church built and endowed by a private individual residing in the colony. He was not instituted or inducted, but he received from the bishop of the colony a license to officiate within the district assigned, and took an oath of canonical obedience to the bishop. The bishop, without the authority of the Crown or of the local legislature, convened a synod, partly of clergy and partly of lay delegates. The clergyman was summoned to attend the synod; but he refused to attend. He was cited to appear before the bishop, and for this disobedience he was first suspended, and deprived of his benefice: — *Held*, that though he did voluntarily submit himself to the authority of the bishop, to enable the bishop to deprive him of his benefice for any lawful cause, yet that the cause for which he was deprived was not a lawful cause. *Long v. Gray (Cape Town Bishop)*, 9 Jur. N. S. 805; 8 L. T. N. S. 738; 1 Moore, P. C. N. S. 413.

That the oath of canonical obedience does not mean that the clergyman will obey all the commands of his bishop, but that he will obey all such commands as the bishop by law is authorised to impose. *Id.*

[1] Under this act the Enclosure Commissioners are not to entertain an application to enclose a common, but a local authority —the Metropolitan Board of Works, or the local board of the Public Health Act, or a vestry — may present a memorial to the Enclosure Commissioners, and a scheme is to be prepared and published. Objections and suggestions are to be made, and a public inquiry instituted on which a report is to be made, and if the scheme is settled it is not to have effect until confirmed by an Act of Parliament. The expenses are to be paid out of the rates. A portion of the royal manor of Greenwich may be obtained, and a common laid out for the public benefit, as also any common in which the Crown or the Duchies of Lancaster or Cornwall have manorial rights.

Semble, that the Court of Chancery has no power to rectify an award of Enclosure Commissioners, even if the award is *ultra vires*. *Bateman v. Boynton*, 1 L. R. Chanc. App. 359; 12 Jur. N. S. 383; 35 L. J. Chanc. 568; 14 W. R. 598; 14 L. T., N. S. 371—L. J.

A declaration alleged that the defendant entered the plaintiff's dwelling-house, and in which he was; and whilst the plaintiff was therein, pulled down and destroyed the dwelling-house and assaulted the plaintiff being therein, and expelled him and his family therefrom. The defendant pleaded, as to the entering, pulling down, and destroying the house, that he was entitled to common of pasture over the land, and because the house was wrongfully erected on the land, so that, without pulling it down, he could not use or enjoy the common of pasture he otherwise would have done; he necessarily and unavoidably committed the trespass, doing no unnecessary damage: —*Held*, bad, as the defendant was not justified in pulling down the house when the plaintiff and his family were in it. *Jones v. Jones*, 1 H. & C. 1.

To prove a plea of right of common appurtenant to a close or toftstead for all cattle *levant and couchant* thereon, it is not necessary to prove that the cattle were fed either wholly or in part from the produce of the toftstead. *Carn v. Lambert*, 11 Jur. N.S. 163; 1 L. R. Ex. 198.

The right to shoot over allotments may be reserved to the lord of the manor. *Leconfield v. Dixon*, 37 L. J. Ex. 33.

The rights of "resident freemen" of a borough to the compensation paid for the extinction of their commonable rights over land taken under section 102, considered, not entitled to the corpus, which was ordered to be invested in land and held upon the same trusts as the land taken. *Nash v. Coombes*, 1 L. R. 6 Eq. 51; 37 L. J. 600.

[2] A common informer must bring an action within a year after commission of the offence. *Dyer v. Best*, 1 L. R. Ex. 152; 35 L. J. 105.

[3] By 9 & 10 Vic. 29 s. 5, the Court of Chancery was authorised to make an order for the return of the Parliamentary deposit only on certificate of the speaker that the bill was rejected or withdrawn, or not presented:—*Held*, that the court might notice a standing order of the House of Commons, whereby the chairman of Ways and Means was constituted Deputy-Speaker in the event of the unavoidable absence of the Speaker; and that it would make the order on the certificate of the Deputy-Speaker, though there was no evidence of the unavoidable absence of the Speaker. *Ex parte Stockbridge Railway Bill*, 1 L. R. 345, M. R.

COMPARISON of Handwriting.[1]

COMMUTATION of Tithes. *See* Tithes.

COMPANY. *See* Joint-Stock Company.

COMPENSATION under Railway and other Statutes. *See* Wordsworth on Law of Compensation; Morris's Tables and Calculations; Ingram on Compensation for Land, &c.

I. Permissive and Compulsory, Permanent and Temporary, Acquisition of Lands. *See post*, Railway.

II. Compensation under Lands and Railway Clauses Act.

(A) *When lands, &c., have been actually taken and injured*, p. 111.

(B) *When indirectly injured or affected*, p. 112.

(C) *Where claimants, are lessees, or have only a temporary interest*, p. 112.

(D) *Practical proceedings connected with.*

(*a*) *Before Sheriff and Jury*, p. 113.

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(*c*) *Before Justices*, p. 114.

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(*e*) *Costs connected with*, p. 114.

I. Permissive and Compulsory, Permanent and Temporary, acquisition of Land.[2]

II. Compensation under Lands and Railway Clauses Act.

(A) *When lands, &c., have been actually taken and injured.*[3]

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[1] On the trial of an action for money lent the question was whether a memorandum was in the handwriting of defendant. On cross-examination of defendant he wrote some words and figures:—*Held*, this writing, being genuine, might be handed to the jury to compare with the memorandum. *Corbett v. Kilminster*, 4 F. & F. 490. *See* Common Law Act, 1854.

[2] The parliamentary power of taking land is created by special acts, each declaring the peculiar object for which it is obtained, and to the "special" act are annexed certain general statutes relating to such proceedings, viz.: of the Land Clauses Act, 1849, s. 63, enacting in estimating purchase-money or compensation regard is to be had not only to the value of the land to be taken, but also to the damage of any to be sustained by the owners by reason of severance or otherwise injuriously affecting such lands. See the Lands Clauses Amendment Act, 1860.

[3] There is a distinction between lands taken and lands injuriously affected. As regards the former, the promoters cannot enter upon or retain any land without being trespassers unless they first pay the compensation or give a specified security for it; but as regards the latter they may go on with the works subject to making compensation when the grievance is sufficiently established (see 7 Hare, R. 259; 3 Macq. R. 808); but a landowner has no remedy for an injury caused by working the line in a proper course. *Percy v. South Eastern Railway Company*, 7 E. & B. 660; *Vaughan v. Taff Vale Railway Company*, 5 H. & N. 679.

The word house, in s. 92 of the 8 & 9 Vic. c. 18, includes only what would pass by a conveyance of a house. *Fergusson v. London, Brighton, and South Coast Railway Company*, 33 L. J., 9 L. T., N. S. 134, L. J.

The rule, that compensation is only given by 8 & 9 Vic. c. 20, s. 6, and *id.* c. 18, s. 68, where what would have been actionable against a company in the absence of statutory powers, is permitted by those powers, and compensation allowed in lieu of the right of action taken away, is not applicable where part of the land is taken, and compensation is sought, not only for the value of the part taken, but for the rest of the land being injuriously affected. *Stockport, Temperley, and Altringham Railway Company, In re*, 10 Jur. N. S. 614; 33 L. J.

(B) *Where indirectly injured or affected.*[1]

(C) *When claimant or lessee has only a temporary interest.*[2]

Q. B. 251; 10 L. T., N. S. 426. S. C. nom. *Reg. v. Chester (Clerk of the Peace)*, 12 W. R. 762—B. C. See *Lee v. Milner*, 2 M. & W. 824

Increased risk of fire may be included in the damages.—*Id.*

Brewers, owners of a public-house, are entitled, in addition to the value of the premises, to compensation in respect of the determination of a covenant in the lease of the house, on the part of the lessee, to sell no ale, &c. other than that purchased of the brewers. *Bourne v. Liverpool (Mayor, &c.)*, 10 Jur., N. S. 125, Q. B. See *Helcoats v. Archbishop of Canterbury*, 10 C. B. 327; *North Eastern Railway Company v. Elliott*, 1 J. & H. 145.

[1] *See Perry v. South Eastern Railway Company*, 7 E. & B. 660; *Vaughan v. Taff Vale Railway Company*, 5 H. & N. 679.

There is no right of set-off for improvements. *Senior v. Metropolitan Railway Company*, 32 L. J. Ex. 225.

The 8 & 9 Vic. c. 18, s. 68, contains no provision for a second inquiry in case of future damage arising not contemplated by the parties at the time of the assessment of compensation. *Croft v. London and North Western Railway Company*, 3 B. & S. 436; 9 Jur. N. S. 962; 32 L. J. Q. B. 113; 7 L. T. N. S. 741. *See* 3 Macq., H. L. 808. Nor is the occupier of premises entitled to compensation in respect of being "injuriously" affected, unless the injury complained of be such that, but for the statutory authority of the company to do the act, the occupier could have sustained an action for damages. Hence he is not entitled to compensation in respect of loss of custom, such damage not being so special to the plaintiff, over the rest of the public, as would have given him a right of action, but for the statutory powers. *Ricket v. The Metropolitan Railway Company*, 2 H. L. 175; 36 L. J. Q. B. 205. But compensation may be had in case of cutting off access to building land: *Reg. v. Brown*, 36 L. J. Q. B. 322; or causing diminution of light, injuring claimant in his trade: *Eagle v. Charing Cross Railway Company*, 36 L. J. C. P. 297. *Ricket v. Metropolitan Railway Company*, 36 L. J. Q. B. 205; 2 L. R. H. L. 175; 16 L. T. N. S. 542; or permanently narrowing a road in front of claimant's house. *Becket v. Midland Railway Company*, 3 L. R. C. B. 82; 37 L. J. C. P. 11; 17 L. T. 499; or for the obstruction or diversion of public road. *Wood v. Stourbridge Railway Company*, 16 C. B. N. S. 223. *See* 2 Q. B. 347; 2 B. & S. 605. But no compensation can be claimed for inconvenience sustained from the authorised crossing on a level of a public road by a railway. *Id.* Or injury to the amenity of a residence, 2 Macq. H. L. C. 229.

An easement is an interest in land for the invasion of which compensation may be claimed. *Eagle v. Charing Cross Railway Company*, 2 L. R. C. P. 638; 36 L. J. C. P. 297; 16 L. T. N. S. 593.

The substitution of a land access for a water access may amount to an injuriously affecting a jetty and landing place of claimant. *The Duke of Buccleuch and Queensberry v. The Metropolitan Board of Works*, Ex. 37 L. J. Ex.

A railway company stopped up for some time the carriage-ways and partially obstructed the footway leading to plaintiff's house, whereby the street in which it was situate was less frequented as a thoroughfare and the profits of his business had decreased:—*Held*, that he was entitled to compensation for the loss of profits as it showed that his interest in the house and land had been injuriously affected. *Senior v. Met. Rail. Co.* 9 Jur. N. S. 802; 32 L. J. Exch. 225; 8 L. T. N. S. 544. *Sed vide Ricket v. Met. Rail. Co. supra.*

A company cannot reduce the damages to be paid to a householder in virtue of the increased value which their works confer upon his house. *Id.*

Although no part of a house be taken by a railway company, and the house is not structurally injured by the construction of the railway, yet if it be depreciated in value by reason of the vibration, noise, and smoke, caused by the locomotives passing when the railway is completed, the owner is entitled to compensation. *Brand v. Hammersmith and City Railway Company*, 2 L. R. Q. B. 323; 36 L. J. 139; 7 B. & S. 1. This case is now pending in the House of Lords.

The Metropolitan Commissioners of Sewers, in constructing a sewer along and under the centre of a highway, cut through a bed of gravel, and the basin of clay which enclosed it, at a distance from A.'s estate varying from 17 to 153 yards. The immediate effect was, to drain the springs rising in the bed of gravel, and prevent them from finding their way into the pond, so that it became dry, and the rivulet and other ponds ceased to be supplied with water:—*Held*, that independently of the statute 11 & 12 Vic. c. 112, A. was not entitled to compensation, as the effect of the sewer was only to intercept underground springs which would otherwise rise into the pond. *Reg. v. Metropolitan Board of Works*, 3 B. & S. 710; but semble he had a right to the water after it had risen to the pond, and that right had been interfered with and prejudicially affected. *Id.*

[2] A tenant from year to year is not entitled to compensation under sect. 121, where the company have *merely* given notice under the 18 sect. requiring him to give up possession. *The Queen v. Storne*, 35 L. J. M. C. 208. *See Rogers v. Hull Dock Company*, 10 Jur. N. S. 1245; 13 W. R. 217; 11 L. T. N. S. 463—C.

(D) *Practical proceedings connected with.*

(*a*) *Before Sheriff and Jury.*[1]

Hence to a count that a railway company, having taken the plaintiff's house for their works, made default in issuing their warrant to the sheriff to summon a jury for settling the compensation, whereby they became liable to pay the amount claimed, the company pleaded that the plaintiff had no greater interest in the house than as tenant from year to year; to which he replied that he was never required to give up possession, and that the company, without his consent, entered upon and took it without notice:—*Held*, that the plea was good, the plaintiff, having no greater interest in the house than as tenant from year to year, was not entitled to have the compensation settled by a jury, but could only obtain it by the determination of justices. *Knapp v. London, Chatham, and Dover Railway Company*, 2 H. & C. 212.

A written agreement void at law, but equivalent in equity to a lease, is an interest greater than a yearly tenancy, within the Lands Clauses Act; and a tenant having and producing such an agreement is not liable to have the value of his interest assessed by two justices under sect. 121. *Sweetman v. Metropolitan Railway Company*, 1 H. & C. 543; 9 Jur. N. S. 671; 32 L. J. Ex. 236; 8 L. T. N. S. 541. *See* 38 L. J. M. C. 49.

Where a railway company serves a notice under the Lands Clauses Act on a lessee to take land held under a lease containing a proviso against assignment without the license of the lessor, the necessity for such license is taken away by the operation of the Act. *Slipper v. Tottenham and Hampstead Junction Railway Company*, 4 L. R. Eq. 112; 36 L. J. Ch. 841; 16 L. T. N. S. 446—R.

As to Metropolitan Board of Works' right to compensation for injury, to sue, or right to lateral support of adjoining land, *see* 37 L. J. C. P. 281.

[1] A notice by a claimant for compensation for lands taken by a company, stating his desire to have the question of compensation settled by a jury, must give such reasonable information as to the nature of his claim as will enable the company to make an offer. *Healey v. Thames Valley Railway Company*, 10 Jur. N. S. 1182; 13 W. R. 44; 11 L. T. N. S. 268—Q. B. But if he claims only as an occupier for loss of trade, it is not necessary for the notice to state what interest he had in the shop. *Cameron v. Charing Cross Railway Company*, 16 C. B. N. S. 430; 10 Jur. N. S. 635; 33 L. J. C. P. 313; 10 L. T. N. S. 381.

Sect. 38 of the Lands Clauses Act is not applicable to, or incorporated with, sect. 68, which provides for the case of lands "taken or injuriously affected," and in respect of which the promoters of the undertaking have made no satisfaction to the owner. *Hayward v. Metropolitan Railway Company*, 10 Jur. N. S. 418; 33 L. J. Q. B. 73; 9 L. T. N. S. 680. But sect. 51, which regulates the mode in which costs of inquiries before juries concerning compensation are to be borne, is applicable to, and incorporated with, sect. 68. *Id.* The promoters are not bound by their first offer, but may make a fresh or amended one, so long as it amounts to a previous offer. *Id.* The promoters may offer separate sums for compensation in respect of property injuriously affected, and for damage to business; and if the jury award more in the one case than the sum offered, and less in the other, the claimant, if the aggregate sum awarded amounts to no more than the two sums offered, is not entitled to costs. *Id.*

A claim for compensation is properly submitted to a sheriff's jury wherever the amount claimed exceeds 50*l.* *Read v. Victoria and Pimlico Railway Company*, 7 H. & C. 826; 9 Jur. N. S. 1061; 32 L. J. Exch. 167.

To an action against a railway company for the full compensation claimed, the company having failed to summon a jury in twenty-one days, the court refused to allow defendants to plead a plea, "that the claim was not a *bonâ fide* claim within the statute, but in fraud of the defendants and without any reasonable cause," not denying *Wade v. Simeon*, 2 C. B. 548; 33 L. J. C. P. 114. *Hooper v. Bristol Port Railway and Pier Company*, C. P., 35 L. J. 299.

Upon an inquisition under sect. 68 of the 8 & 9 Vict. c. 18, to ascertain the compensation due to a claimant who alleges that his lands have been injuriously affected by a company's works, the jury is to estimate the amount of compensation for the damage in point of fact only, and cannot enter into any question of legal right to recover for such damage. *Reg. v. Metropolitan Railway Company—Ex parte Horrocks*, 4 B. & S. 315; 32 L. J. Q. B. 367; 8 L. T. N. S. 663. The legal right may be questioned by proper pleading in an action to recover the amount of compensation awarded by the jury. *Id. Barber v. Nottingham and Grantham Railway Company*, 15 C. B. N. S. 726. 33 L. T. C. P. 193; 9 L. T. N. S. 829. *Reg. v. Metropolitan Railway Company*, 16 Jur. N. S. 204—Q. B.

Where part of a field, available for building purposes, had been taken by a railway company, under compulsory powers, so as to detach and leave without practicable access the larger portion of the field:—*Held*, that the jury was rightly directed in assessing compensation for the severance, to consider the access to the severed portion as cut off, as such access could not be afforded to building land by accommoda-

(*b*) *Before Arbitrators.*[1]

(*c*) *Before Justices.*[2]

(*d*) *Mandamus to compel compensation.*[3]

(*e*) *Costs connected with.*[4]

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tion works, which the company, under the Railway Clauses Act, sects. 68, 69, might be ordered to make; and the jury ought therefore to exclude these works from their consideration. *Reg. v. Brown*, 36 L. J. Q. B. 322; 2 L. R. Q. B. 630; 16 L. T. N. S. 827.

After compensation awarded by a sheriff's jury, under 8 & 9 Vic. c. 18, the party against whom such compensation has been adjudged, may, nevertheless, in an action against him for the amount and costs, plead that the lands in respect of which the compensation was allotted, were not injuriously affected. *Read v. Victoria and Pimlico Railway Company*, 7 H. & C. 826; 9 Jur. N. S. 1061; 32 L. J. Ex. 167.

Where a warrant had issued to assess compensation, and the sheriff held an inquisition thereon, and the jury found that the claimant was not entitled to any compensation, but by proceedings in the superior court the claimant caused the inquisition, the verdict, and the judgment thereon to be set aside, yet the notice and warrant still remain; and although the twenty-one days for the sheriff to summon a jury have expired, the claimant has no right to begin again by a fresh notice, but the sheriff must go on under the previous notice and warrant. *Horrocks v. The Metropolitan Railway Company*, C. P., 10 C. B. 139.

The interest which at common law disqualifies an officer from acting in a judicial inquiry must be direct and certain, and not merely remote or contingent; and the same principle must be applied to the Lands Clauses Act, s. 39. *Reg. v. Manchester, Sheffield, and Lincolnshire Railway Company*, 2 L. R. Q. B. 336; 16 L. T. N. S. 173; 36 L. J. Q. B. 171; 15 W. R. 676.

[1] In action on an award under s. 68 it is a good plea traversing the injurious affecting. *Beckett v. Midland Railway Company*, 35 L. J. C. P. 163; 1 L. R. C. P. 241.

An award of arbitrators upon a claim for compensation for lands injuriously affected, like the assessment of a compensation jury, merely ascertains the amount, not the claimant's right to compensation. Such an award, therefore, cannot be enforced by motion, like an ordinary award. *Newbold, In re, and Metropolitan Railway Company*, 14 C. B. N. S. 405.

Semble, that it is not competent to the arbitrators to state facts for the opinion of the court as upon a special case. *Id.*

An arbitrator appointed by the Board of Works having declined to give compensation to a party whose lands, though not taken, were injuriously affected, and having also refused to provide accommodation works, the court granted a mandamus to him to compel him to entertain the questions. *Reg. v. Rynd*, 9 L. T. N. S. 27—Irish Q. B.

[2] If the owners and promoters cannot agree and the claim be under 50*l.* the dispute is to be settled by two justices—in the metropolis by a single police magistrate; or if more than 50*l.* the owner has the option of having the assessment made by arbitration or a jury.

The 8 & 9 Vic. c. 20, defining such justices as are to have jurisdiction as "shall not be interested in the matter," does not render interest so absolutely disqualifying as to prevent the objection being waived. *Wakefield Board of Health v. West Riding Railway Company*, 1 L. R. Q. B. 84; 35 L. J. Mag. Cas. 69.

Where an occupier of land or houses has not greater interest therein than as a tenant for a year, or from year to year, he can obtain compensation only by the determination of two justices, and is not entitled to have his claim settled by arbitration under sect. 68, 8 & 9 Vic. c. 8. *Knapp v. London, Chatham, and Dover Railway Company*, 9 Jur. N. S. 671; 32 L. J. Ex. 236; 8 L. T. N. S. 541. See 38 L. J. M. C. 49.

The magistrates, in ordering what accommodation works are to be made in cases of severance, can only have regard to the present use of the severed land, but the jury in assessing damages for severance may consider the prospective value of the land for other purposes, or for building; the jury to assess damage on the principle that access was cut off. *Reg. v. Brown*, 2 L. R.; 2 Q. B. 630.

[3] Where a railway company has given notice to a landowner and the case is one entitling him to have the amount of compensation assessed by a jury, and the company neglect to issue their warrant to the sheriff to summon a jury within a reasonable time, the landowner has a right to proceed by an action for a mandamus to the company to issue their warrant. *Fotherby v. Metropolitan Railway Company*, 36 L. J. C. P. 88; 2 L. R. C. P. 188.

[4] 8 & 9 Vic. c. 18, sect. 51, is not incorporated into sect. 94, so as to make the costs of an inquiry as to the value of the land severed, and the cost of making a communication between the parts depend on the "offer" of the company. The question as to the costs is a *casus omissus;* and costs cannot be given unless the intention of the statute be clear. *Cobb v. The Mid. Wales Railway Company*, 1 L. R. Q. B. 342; 35 L. J. 117.

If an inquiry into the compensation takes place before a jury, and the costs are settled

COMPOSITION and Arrangement with Creditors. 3 Ab. 155. *See* Forsyth's Composition with Creditors. *Ante*, Accord and Satisfaction, p. 3.

I. At Common Law.

(A) *Of the Nature and Requisites of the Deed or Composition Contract*, p. 116.

(B) *Of the Assent of Creditors*, p. 116.

(C) *Of Fraudulent Preference*, p. 116.

(D) *Of Collateral Parties, Sureties, and Trustees*, p. 116.

(E) *Remedies connected with*, p. 116.

II. In Bankruptcy,[1] under 24 & 25 Vic. c. 136. *See* Sill's Composition Deeds; Wetherfield, id.; De Gex, id.

(A) *General Nature and Requirements of Arrangements under the Statute and Examination of Debtor*, p. 117.

(B) *Particular Requisites.*

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(*m*) *Pleading deed and summarily applying to court*, p. 122.

(*n*) *Joint and separate creditors*, p. 123.

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by one of the masters of the Queen's Bench, the magistrate, upon an application for a distress warrant to levy the costs, is bound to consider the decision of the master as final. *Metropolitan Railway Company v. Turnham*, 14 C. B. N. S. 212; 32 L. J. M. C. 249; 11 W. R. 695; 8 L. T. N. S. 280. The Court of Queen's Bench has no jurisdiction to review the taxation of the master. He is in the position of an original arbitrator. *Owen v. London and North Western Railway Company*, 3 L. R. Q. B. 54; 37 L. J. 35; 17 L. T. 210. *Hayward v. Metropolitan Railway Company*, 33 L. J. Q. B. 73.

In a claim for compensation, the parties to the undertaking must make an offer ten days previously to trial, in order to save half the costs, in the event of the jury giving a less sum than they offered. *Metropolitan Railway Company v. Turnham, supra.*

An offer, by the promoters, of a sum of money as compensation to the claimant, such as to disentitle the latter to costs, must be for compensation alone, and must not be of a lump sum to cover compensation and costs. *Balls v. Metropolitan Board of Works*, 1 L. R. Q. B. 337; 35 L. J. 101.

[1] The cases are given here very briefly as the act of 31 & 32 Vic. 104, came into operation, 11th Oct. 1868. *See post.*

(*o*) *Illegal Preference, and verification of Debt*, p. 124.
(*p*) *Rights and liabilities of Trustee*, p. 124.
(*q*) *When arrangement an Act of Bankruptcy*, p. 124.

III. In Bankruptcy, under 12 & 13 Vic. s. 106, p. 124.

IV. Under 31 & 32 Vic. c. 104, "Bankruptcy Act, 1868," p. 124.

V. Under Liquidation Act, 1868. See Liquidation Act.

I. At Common Law.

(A) *Of the Nature and Requisites of the Deed of Composition Contract.*[1]

(B) *Of the Assent of Creditors.*[2]

(C) *Of Fraudulent Preference.*[3]

(D) *Of Collateral Parties, Sureties, and Trustees.*[4]

(E) *Remedies connected with.*[5]

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[1] It is not essential to the validity of a deed of composition that it should contain a schedule of creditors. *Stone v. Jellicoe*, 34 L. J. Ex. 11.

A creditor's composition deed contained covenants by the debtor and two sureties to pay a certain sum by instalments to a trustee for creditors, and it contained a proviso that in case default shall be made in payment of any instalment, &c., or in case before the last instalment should be paid, the debtor should be adjudicated bankrupt, &c., "then these presents and every provision, &c., herein, *shall be thenceforth at an end and void*," &c. The debtor was adjudicated bankrupt:—*Held*, in an action by the trustee against the sureties, that the deed was only voidable at the election of the creditors. *Hughes v. Palmer*, C. P. 13 W. R. 974.

[2] A creditor may agree to take less than the amount of his debt provided payment is made by a particular day, and in default may recover the whole debt; but if the agreement is that the debtor shall pay part and give a mortgage for the residue, and when the mortgage is prepared a further condition is introduced (forming no part of the original agreement) that if the mortgage money is not paid on the day fixed, the creditor may recover the whole debt, this is a penalty and not enforceable in equity. *Thompson v. Hudson*, 2 L. R. Ch. 255; 36 L. J. Ch. 388; 16 L. T. N. S. 254.

A deed, in which a debtor covenants to pay instalments to a trustee for the creditors, is not void for the want of a covenant with the creditors that they shall be paid. Nor because the instalments are to extend over seven years. *Stone v. Jellicoe*, 34 L. J. Exch. 11; 11 L. T. N. S. 140.

[3] The defendant being indebted to the plaintiff and other creditors, in order to induce the plaintiff to accept a composition, agreed to pay him an additional composition, which was secured by a bill drawn by the plaintiff upon and accepted by the defendant's brother. The bill being dishonoured, the defendant assigned to the plaintiff a policy of assurance as a security for payment of the bill:—*Held*, that it was tainted with the illegality of the original transaction, and could not be enforced. *Geere v. Mare*, 2 H. & R. 339; 33 L. J. Exch. 50. S. P. *Clay v. Ray*, 17 C. B. N. S. 188; 8 L. T. N. S; 46 *Jos. Lancaster v. Elce*, 31 Beav.

[4] A surety gave a note for 300*l.* "to secure an advance now or hereafter on a banking account with P. and L." Subsequently P. and L. executed a deed for the benefit of creditors, and the bankers received 16*s.* in the pound on the entire amount of their claim:—*Held*, that the surety was entitled to the benefit of the deduction of 16*s.* in the pound. *Gee v. Pack*, 9 L. T. N. S. 290.—Q. B. Where A. accepted a bill for the accommodation of B.; while it is running, B. executed a deed of arrangement; A. having afterwards taken up and paid the bill, brought an action against B. to recover the amount:—*Held*, that the deed was no answer to the action. *Mare v. Underhill*, 4 B. & S. 566.

[5] A deed of assignment by a partnership firm is no answer to actions by separate creditors. *European Central Railway Co. v. Westall*, 35 L. J. Q. B. 9.

Nor is release restrained by a covenant not to sue. *Bond v. Weston*, 35 L. J. Q. B. 7; 4 F. & F. 477.

It is a good replication on equitable grounds to a plea setting up a composition, that it was obtained in fraud of the creditor. *Dauglish v. Tennent*, 2 L. R. Q. B. 49. And payment under a garnishee-order before the defendant had notice of the deed is a valid answer to an action by the trustees, *Wood v. Dunn*, 36 L. J. B C. 72.

As to plea to action to do no act in dero-

II. In Bankruptcy under 24 & 25 Vic. c. 136.

(A) *General Nature and Requirements of arrangements under the Statute, and examination of Debtor.*[1]

gation of composition-deed. *See Gerard v. Lewis*, 2 L. R. C. P. 305; 36 L. J. C. P. 173; 15 L. T. N. S. 663.

[1] The deeds under the act of 1861 are divisible into three descriptions, one by which a debtor assigns his estate or part of it to trustees on behalf of the creditors; another for the payment of any agreed composition, and the last, arrangements for continuing the insolvent's trade under the management of inspectors.

At common law all the creditors must have concurred in the proposed arrangement, non-assenting creditors were not bound by it. This is obviated by the statute making the acquiescence of a certain portion binding upon the whole body, and under the 192nd section, without the obligation of giving notice to the creditors. Hence by contrivance the requisite majority might be obtained to bind the *bonâ fide* and independent creditors to favourable or unreasonable terms,—an evil provided against by the new act. Under s. 185 the court has power to hear dissentient creditors and to decide on the reasonableness of the deed. No *cessio bonorum* is requisite to the validity of the transaction, those deeds which are intended to be binding upon them who execute them must be registered under s. 194; those to be binding upon all creditors under ss. 192, 193, and entitle the debtors to the benefits conferred by s. 198. The deeds should provide for perfect equality among the creditors and contain no provision not essential for the release of the debtor. The s. 192 does not itself release the debt. debtor's claim to that effect shall be inserted. The Court of Bankruptcy has a discretionary power to withhold its sanction to an arrangement deed, notwithstanding the assent thereto of three-fourths in number and value of the creditors, where it sees that the terms are not reasonable or *bonâ fide* as regards some of the creditors. *In re Beck*, Ir. Rep. 1 Eq. 68. *Ex parte Bank of England. In re Price*, 2 L. R. 2 Ch. Ap. 662; 36 L. J. Bcy. 24.

The 192nd s. applies only to deeds which contain provisions for the benefit of all the debtor's creditors, and this requisite is not fulfilled by a deed, the trusts of which are for the benefit of such of the debtor's creditors as shall execute the deed within a limited time. *Morgan, Ex parte, in re Woodhouse*, 1 De G. J. & Sm. 288; 1 De G. J. & Sm., Bank. App. and it must appear on the face of it to be for the benefit of all the creditors. *Ilderton v. Jewell*, 10 Jur., N. S. 747; 33 L. J. C. P. 148; 9 L. T. N. S. 815—Ex. Ch. and must not be fraudulent to evade the process of a creditor. *Morrison, Ex parte, in re Clunn*, 10 Jur. N. S. 787; 33 L. J. Bank. 47.

Throughout the Bankruptcy Act, 1861, the word "creditor" is used in the sense of a person having a claim which can be proved under the bankruptcy, whether upon a debt or not; and in the 192nd section of the act "creditors" must mean all persons who at the time of the execution of the deed had claims which would have been provable against the estate if the debtor had then become a bankrupt. *Wood v. De Mattos*, 35, L. J. Ex. 64. *Godden, Ex parte, in re Shettle*, 1 De G. J. & Sm. 260; 1 De G. J. & Sm. Bank. App. 36. *See Smith, Ex parte in re Smith*, 10 L. T. N. S. 803—C.

A *cessio bonorum* is not necessary to its validity. *Clapham v. Atkinson*, 12 W. R. 1062; 10 L. T. N. S. 908—Ex. Ch., nor does a clause that debtors may remain in possession invalidate. *Johnson v. Barratt*, 35 L. J. Exch. 15; 1 L. R. Ex. 65.

An assignment or a surrender of a debtor's estate to be binding on the minority of creditors, who have not executed or assented to or approved of it, it is necessary that they should stand under the deed in the same situation and with the same advantages as the creditors forming the majority. *Cockburn, Ex parte, in re Smith*, 10 Jur. N. S. 573; 33 L. J. Bank. 17; 10 L. T. N. S. 252—C. *Daves v. Raphael*, 11 L. T. N. S. 539.

A debtor having executed a deed of assignment for the benefit of creditors, neglected to give up to the trustees his books of account, the possession of which was necessary to enable the trustees to get in the debts due to the estate, until some time after execution of the deed:—*Held*, that the requirements of the 7th condition of the 192nd section had not been complied with. *Goss, Ex parte, in re Wilmott*, 9 L. T. N. S. 734.

The section, enabling a person to prove in bankruptcy for unliquidated damages, applies to trust-deeds for creditors by force of section 197. *Ex parte Townsend. In re Penton's Trust Deed*, 35 L. J. Bank. 17. A letter of license by deed made between a debtor and his assenting creditors is not a deed capable of binding non-assenting creditors. *Latham v. Lafone*, 36 L. J. Ex. 17; 2 L. R. Ex. 115; 15 L. T. N. S. 627. *See* 4 L. R. Eq. 566. Nor a deed which imposes personal liability on non-assenting creditors, as where it contains a power to carry on the business of the debtor's. *Wayfield v. Nicholson*, 37 L. J. Q. B. 154. *Reeves v. Watts*, 35 L. J. Q. B. 171, or which purports to be made between the debtor and such of his creditors as shall execute the same, and which either expressly or impliedly excludes from its benefits and provisions non-executing creditors, is invalid. *Ilderton v.*

(B) *Particular requisites.*

(a) Of the Assent of Creditors, and by whom, and how majority is to be ascertained.[1]

Castrique, 14 C. B. N. S. 99; 9 Jur. N. S. 993; 32 L. J. C. P. 206; 11 W. R. 755; 8 L. T. N. S. 537. *Woods v. Foote*, 1 H. & C. 841; 32 L. J. Exch. 199; 11.

The deed of arrangement contemplated by the 192nd section is one which is made for the benefit of all the creditors of the debtor, and to which all may become parties. *Berridge v. Abbott*, 13 C. B. N. S. 507. S. P. *Copeman v. Hart*, 14 C. B. N. S. 91. *Dewhurst v. Kershaw*, 1 H. & C. 726; 32 L. J. Exch. 146; 7 L. T. N. S. 720. *Dell v. King*, 9 L. T. Ex. 576. *Hazlegrove v. House*, 35 L. T. Q. B. 1 *Inglebald v. Nichols*, 14 C. B. N. S. 45.

A creditor who has not assented to a deed of his debtor under section 192 (in this case an inspectorship deed) is entitled to a summons for the examination of his debtor touching all the circumstances of the case, without stating the object for which he desires the examination. *In re Redway. Ex parte Redway*, 35 L. J. Bank. 20.

A second composition deed is not necessarily invalid. *Re Roots*, 36 L. J. B. C. 38.

Where a shareholder who is indebted for calls, executes an arrangement deed under s. 192, not containing a *cessio bonorum*, and not purporting to include as debts future calls, the Court will not prevent the official liquidator from enforcing a call subsequently made, as he cannot prove under the deed, not being included; and s. 75 of 25 & 26 Vic. c. 89, does not apply to deeds not containing a *cessio bonorum*. *In re Richmond Hill Hotel Company; Ex parte King*, 3 L. R. 3 Ch. App. 10; 17 L. T. 188.

[1] By s. 192, a majority in number representing three-fourths in value of the creditors of 10*l.* and upwards must assent.

The power given by the Bankruptcy Act of 1861, s. 192, enabling the majority of creditors assenting to a deed of arrangement to bind the non-assenting minority, is a statutory power, and must be exercised *bonâ fide* for the benefit of all the creditors. *Ex parte Cowen, in re Cowen*, 2 L. R. Ch. 563; 16 L. T. N. S. 469; 15 W. R. 859.

It is not essential that the deed or instrument should be in writing before the assents are given. It is sufficient if the deed which is subsequently prepared, executed, and registered, substantially agree with the signed assents. *Matherson v. Ross*, 2 H. L. C. 286. *Rutty v. Benthall*, 2 L. R. C. P. 488; 36 L. J. 194.

A creditor, by his acquiescence in the preparation and execution of a deed of assignment, although he may not be bound to come in under the deed, may nevertheless debar himself from alleging the execution of it by the debtor to be an act of bankruptcy. *Stray, in re*, 36 L. J. Bank. 7; 15 W. R. 600; 16 L. T. N. S. 250.—L. J.

Certain of an arranging debtor's creditors were public unincorporated companies and banking companies, incorporated under the 7 Geo. 4, c. 46, or the 7 & 8 Vict. c. 113. These creditors were represented, and assented to the resolution made at a private meeting by a person who acted for them under powers of attorney (not under seal) executed by their managers. The banks which they represented ratified their acts by receiving the composition:—*Held*, that the assents were properly given. *Naylor v. Mortimore*, 17 C. B. N. S. 207; 10 Jur. N. S. 1001; 33 L. J. C. P. 273. *See Keys v. Elkin*, 11 L. T. N. S. 474.

A conditional assent on the part of a creditor to a deed intended to operate under the 192nd section cannot, so long as the condition remains unfulfilled, be reckoned in calculating the statutory majority of creditors mentioned in the first of the conditions specified in that section. *Rawlings, Ex parte, in re Rawlings*, 1 De G. J. & Sm. 225. The statutory majority of creditors have the power to bind the minority in giving a discretion under the deed to the trustees. *Coles v. Turner*, 1 L. R. C. P. 373; 35 L. J. 169.

An assent in writing to a trust-deed under section 192 of the Act, is good though given before the deed itself is prepared; and, though the assent is only expressed to be a "deed for the payment of a composition in discharge of the creditor's debts," and the deed as ultimately prepared contains a release. *Waddington v. Roberts*, 37 L. J. Q. B. 253. *Middleton, Ex parte, in re Middleton*, 33 L. J. Bank. 36.

If, in ascertaining whether three-fourths of the value of the creditors have signed a composition deed, both secured and unsecured creditors are included in the whole amount, the creditors parties to the deed must be taken to have signed in respect of both their secured and unsecured debts, and the proportion ought to be calculated accordingly. The names and the amount of the debts of all the creditors must appear, whether secured (wholly or in part) or unsecured. *Turquand v. Moss*, 17 C. B. N. S. 15; 10 Jur. N. S. 824; 33 L. J. C. P. 355; 10 L. T. N. S. 574. S. P. *Smith, Ex parte, in re Smith*, 10 L. T. N. S. 803, C. *Whittaker v. Lowe*, 1 L. R. Ex. 74. *Godden, Ex parte, in re Shettle*, 32 L. J. Bank. 37; 7 L. T. N. S. 608—L. J.

Non-assenting creditor will be bound by a deed in the form given in schedule D, though it contains no release of debts, if a proper number of creditors duly assents to it. Special circumstances must be shown to induce the court to give such a creditor leave to sue out execution. *In re Thatcher, ex parte Thatcher*, 36 L. J. Bank. 14.

(*b*) *Trustee and Debtor executing deed.*[1]

(*c*) *Attestation.*[2]

(*d*) *Possession being taken under deed.*[3]

(*e*) *Not necessary Debtor's property to be assigned.*[4]

(*f*) *Registration of Deeds under* ss. 192, 193, and 194[5]

A. and B., after trading as co-partners, dissolved partnership, and subsequently executed separate deeds of composition:—*Held*, that joint creditors of the partnership could not (in the absence of proof of the existence of joint estate) object to the deeds as not binding on them. *Cockburn, Ex parte, in re Smith and Laxton*, 10 Jur. N. S. 573; 33 L. J. Bank. 17; 10 L. T. N. S. 252.

Objections to the validity of a deed by a non-executing creditor overruled on the ground that there was a clause in the deed "that if there was anything therein not authorised by the provisions of the Bankruptcy Act, 1861, such unauthorised thing should be obligatory only on those persons who should have executed, or acceded, or assented to the deed." *Re Tresidder*, 1 L. R. Ch. Ap. 21.

[1] By s. 192, trustee and debtor must execute deed and the execution attested by an attorney or solicitor.

[2] A creditors' deed under s. 192 was executed by the duly constituted attorney of the debtor—in this case his own partner—and such execution was attested by a solicitor:—*Held*, this was a compliance with the Act, although the power of attorney was not attested by a solicitor. *In re Fulcher*, 1 L. R. Ch. Ap. 519.

[3] By s. 192, possession is to be delivered by debtor of property comprised in the deed.

[4] As it has been decided that it is not essential to the validity of a deed under the 192nd s. that there should be a *cessio bonorum*, so although the deed purports to assign all the property of the debtor to the trustee, but contains a stipulation that until failure by the debtor and surety in payment of the agreed instalments, the debtor should be allowed to remain in possession and carry on his business, the deed is valid. When the real intent of the deed is, that property is to be given up to the trustee, then it must be delivered to him. *Johnson v. Barrett*, 1 L. R. Ex. 65. *See* cases collected in 1 Griffith, B. L. 1003, and *ante*, 117.

[5] By s. 192, within 28 days from the day of the execution of the trust-deed or instrument by the debtor, the same shall be produced and left (having been first duly stamped) at the office of the chief registrar for the purpose of being registered with an affidavit by the debtor, or some person able to depose thereto. *See Walker v. Nevill*, 34 L. J. Ex. 73.

The court had no power to extend the time beyond the 28 days. *Re Skinner*, 34 L. J. C. P. 9; but now it may, s. 3, Act 1868.

A deed of composition, registered under the 194th section, although executed by more than three-fourths in number of the creditors, will not bind the remainder. *Morgan, ex parte, in re Woodhouse*, 9 Jur. N. S. 559; 32 L. J. Bank. 15; 7 L. T. N. S. 729—C.

To make such a deed binding upon the minority of the creditors, it is necessary that the terms of the 192nd section should be followed. *Id.*

The exclusion of any creditor by the trust-deed will exclude the benefit of the provisions incident to the registration, under sect. 192. *Id.*

The 194th section applies not only to deeds which comply with, and are framed under, the 192nd section, but to every deed whatever which professes to be, or is on the face of it intended to be, a deed of arrangement between a debtor and the whole body of his creditors. *Hodgson v. Wightman*, 1 H. & C. 810; 9 Jur. N. S. 308; 32 L. J. Exch. 147; 11 W. R. 574; 7 L. T. N. S. 832.

Every such deed, therefore, which is not registered under provisions of the 194th section, is inadmissible in evidence. *Id.; Wishart v. Fowler*, 4 B. & S. 674; 33 L. J. Q. B. 125; *see General Furnishing and Upholstery Company v. Venn*, 9 Jur. N. S. 550; 32 L. J. Exch. 220; 8 L. J. N. S. 432.

Although a creditor's composition deed takes effect for some purposes from the date of its execution by the debtor, yet the date of registration is the period which fixes the rights of parties affected thereby. *Stanger v. Miller*, 1 L. R. Ex. 58.

Although such a deed cannot in general be received in evidence unless registered. *Pritchard v. Timothy*, 35 L. J. Ex. 165. It may be admitted as against the bankrupt. *Wensley, ex parte, in re Wensley*, 9 Jur. N. S. 315; 32 L. J. Bank. 23; 11 W. R. 241; 7 L. T. N.S. 548.

The 198th section declaring that the chief registrar's certificate shall be available to the debtor "as a protection in bankruptcy," does not confer a protection equivalent to, nor of the same force as the protection granted to a bankrupt. *Johnson ex parte, in re Johnson*, 10 L. T. N. S. 848. The 189th section applies only to protection against caption, and not to protection against detention. *Id.* Any application by a debtor for his release from custody must be made to the court out of which the capias issued. *Id.*

The certificate of registration is only *primâ facie* evidence of the fulfilment of the requisites. *Page, ex parte, in re Neale*, 1 De G. J. & Sm. 283; 1 De G. J. & Sm. Bank. App. 59.

It is no objection to the validity of a deed, that the composition is to be paid before

(*g*) *Subject to ad valorem duty.*[1]

(*h*) *Must be for equal benefit of all Creditors.*[2]

(*i*) *Reasonable and unreasonable stipulations.*[3]

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the twenty-eight days allowed for the registration of the deed; a dissentient creditor may refuse to receive it until he see whether the deed turns out to be a binding deed on him, or he may receive it under protest. *Brooks v. Jennings*, 1 L. R. C. P. 476.

Section 197 only applies to trust-deeds for creditors where the formalities imposed by sections 192 and 193 have been complied with, and does not apply to deeds only coming under section 194. *Pearson v. Pearson*, 1 L. R. Ex. 308.

An affidavit for obtaining the registration under section 200, stated that the deponent had been informed, and believed, that negotiable securities had been negotiated, and that he was unable to ascertain in whose hands they were:—*Held*, insufficient in not stating the grounds of belief, and the steps taken to ascertain who were the holders of the securities. *Dobson, ex parte, in re Anderson*, Jur. N. S. 812; 10 L. T. N. S. 802—C.

Although a deed of composition may be bad as not being such a deed as is contemplated by the 192nd section, yet, after the registration of such deed, it is still proper for a creditor desiring to issue execution against the debtor to apply to the Court under s. 198. 35 L. J. B. 6; *ex parte Somerville*, 35 id. B. C. 1; *Skilton v. Simmons*, C. P. 11 Jur. N. S. 140.

After much delay—and acts done under the registered deed—the court will not cancel the registration. It is questionable whether the court can rectify errors of the registrars in registering a deed not authorized by the statute, and whether the order of 22nd May, 1862, requiring an account to be filed with the deed is not beyond the powers given by the 45th sect. *In re Soders*, 35 L. J. B. C. 37; 1 L. R. C. 406; *see Sellers v. Price*, 36 L. J. 93 Ex.

[1] Required by s. 192, 5*s.* on every 100*l.* in addition to the ordinary stamp duty.

[2] A deed is bad the effect of which is to divide the joint and separate estate of the debtor among joint debtors, and to divide the estate only among those who signed. *Dingwell v. Edwards*, 33 L. J. Q. B. 161; *Leonard v. Sheard*, 28 L. J. Q. B. 183; *M'Laren v. Baxter*, 36 L. J. C. P. 247; *Tetley v. Wanley, id.* 153. So a clause that no creditor should negotiate a bill, &c., of the debtor without indorsing thereon a memorandum of the making of the deed. *Hidson v. Barclay*, 33 L. J. Ex. 273; or indemnifying the debtor against liability on bills. *Woode v. Foote*, 32 L. J. Ex. 199; or debt to be verified by creditors in a particular manner; *Leigh v. Pendletay*, 33 L. J. C. P. 132; or a clause making the signing of the deed a condition precedent to the payment of the composition. *Martin v. Gribble*, 34 L. J. Ex. 108; *Leigh v. Pendleberry, supra;* or to pay creditors under 10*l.* in full, or to exclude creditors who did not come in within a certain time. *Dewhurst v. Kershaw*, 32 L. J. Ex. 146; *Peel v. Webster*, 36 L. J. Ex. 188; *Isaacs v. Green*, 2 L. R. Ex. 352; 36 L. J. Ex. 253; or postponing payment to non-assenting creditors. *Ex parte Cockburn*, 33 L. J. C. P. 17. *See Russell v. Jones*, 38 L. J. Q. B.

A deed was made between a debtor and the several persons who subscribed the schedule thereto, "on behalf of themselves and all and every other the creditors" of the debtor, and showed a clear intention that all creditors should be equally benefited:—*Held*, that all creditors were parties; that there was no inequality, and that the deed was good. *M'Laren v. Baxter*, 36 L. J. C. P. 274; 2 L. R. C. P. 559; 16 L. T. N. S. 521.

[3] It is not essential to the validity of a deed under the section that the rights of the executing and non-executing creditors should be identical. The executing creditors may impose a burthen on *themselves*, which, if imposed on the non-executing creditors, would render the deed invalid (*Macnaught v. Russell*, 1 H. & N. 611); nor is it necessary that the deed should be tendered for execution to all the creditors. *Hidson v. Barclay*, Ex. Ch. 3 Hurl. & Colt. 361.

It is now settled, if there is no inequality in the provisions of a deed between a debtor and his creditors, and if the deed is untainted with fraud, it is not the province of the court to inquire whether the bargain is reasonable or unreasonable, the law having constituted the majority of the creditors judges of this question. *Richmond Hill Hotel Company, King, ex parte*, 36 L. J. 67, Ch; 17 L. T. N. S. 188; 3 L. R. Ch. 10; see *Geddings v. Penning*, 1 L. R. Ex. 325; *Bondnoes v. Mason*, 1 L. R. Ex. 28; in *Peel v. Webster*, 36 L. J. Rep. Exch. p. 189, Channell, B., said, "The more I consider these cases, the more am I confirmed in the view that the court should deal with questions of equality or inequality only, and leave the questions of reasonableness or unreasonableness to the creditors themselves." *Blumberg v. Rose*, 35 L. J. Ex. 144; see *Gresty v. Gibson*, 35 L. J. Ex. 74; *Greenberg v. Ward*, 1 L. R. C. P. 585; *Peel v. Webster*, 36 L. J. Ex. 188.

Although a clause in a creditor's composition deed, providing that the trustees of the deed shall be at liberty to require the amounts of debts to be verified by a solemn declaration of the creditor, is not unreasonable, yet if the deed provides that on failing to comply with such requisition a creditor shall lose all benefit under the deed, that is unreasonable, and will vitiate the deed as against dissentient creditors. *Giddings v. Penning*, 1 L. R. 1 Ex. 325; 35 L. J. 191.

A deed contained a release of the debtor from all actions, &c., in respect of any debt or debts, &c., *contracts*, &c. It was con-

(*j*) *Nature and amount of Composition.*[1]

(*k*) *Tender and payment of.*[2]

(*l*) *Effect of valid deed and registration, and what claims discharged.*[3]

tended that the release was unreasonable, as it would release him from the effect of contracts not broken at the date of the deed. But *Held*, that the release should be construed to apply only to the then existing debts of the creditors. *Hazelgrove v. House*, Q. B. 35 L. J. 1.

[1] A deed provided for payment by instalments at stated times, and there was a covenant by creditors not to sue, &c., "until the said instalments or one of them shall become payable, and shall not be paid within three days after demand." In case any instalment shall not be duly paid when due, the deed shall be at an end and the creditors at liberty to sue. The first instalment was not paid, and a judgment non-assenting creditor without demand of payment sued out execution:—*Held*, the deed no defence from the execution. *Baker v. Painter*, 1 L. R. 2 C. P. 492.

Where a creditor's composition deed contains a covenant by the debtor "forthwith" to deliver bills of exchange to the creditors for the composition, time is to be calculated from the date of registration, not from the date of the deed. *In re Sullivan, ex parte Sullivan*, 36 L. J. (Bkcy.) 1.

It is no objection that creditor could only sue in name of the trustee to enforce deed. *Saury v. Law*, 3 L. J. N. 56; or that it postpones the payment of the debts for two years, and gives no benefit to the creditors, except the covenant of the debtor. *Richmond Hill Hotel Company, King, ex parte*, 4 L. R. Eq. 566. Affirmed on appeal. 3 L. R. Ch. 10.

When trustees stand possessed of an estate, in the first place to pay expenses of deed, &c., and procuring assent of creditors, is not unreasonable. *Jacobson v. Lamert*, 36 L. J. Ex. 221, and to determine amount of dividend from time to time to be paid.

A power for the inspector to retain a sufficient sum for the purpose of paying a dividend to any creditor who should not have executed the deed does not invalidate the deed. *Bailey v. Bowen*, 37 J. L. Q. B. 61; 3 L. R. Q. B. 133.

A trust to pay costs of a previous deed of arrangement in full not necessarily unreasonable. *Fitzpatrick v. Bourne*, 3 L. J. N. 56.

A deed, providing for the payment of the composition of ten shillings in the pound, by instalments at two, four, and six months, is bad on the ground of inequality by the trustee of the deed being given a power to pay off in one instalment any creditor whose composition did not exceed 10*l*. *Thompson v. Knight*, 2 L. R. Ex. 42. *Isaacs v. Green*, 36 L. J. Ex. 253.

The giving of promissory notes for the composition to the creditors who execute the deed, and covenanting with the trustee to give notes to the non-assenting creditors, is not on an inequality. *Saury v. Law*, 37 L. J. Q. B. 96.

[2] A tender of the composition, it has been said, must be made to the creditor. *Hoadley v. Jenkins*, 16 L. T. N. S. 389. *Re Sullivan*, 36 L. J. B. 11; but not according to *Lay v. Morttram*, 18 C. B. *Jessard v. Magney*, 18 id. 286, for the covenants are absolute. *Tetley v. Wanless*, 36 L. J. Ex. 25, id. 153. A composition payable in two instalments. When the first instalment became due, the debtor forwarded a draft for it to plaintiff, a non-assenting creditor. Plaintiff kept the money, and gave no receipt. So as to the second instalment. Afterwards it was decided that the deed did not bind non-assenting creditors:—*Held*, that plaintiff was bound by his acceptance and retainer of the instalments. *Kitchen v. Hawkins*, 2 L. R. C. P. 22. *See Farrell v. Hilditch*, 5 C. B. 860; post 122.

[3] A deed by which a debtor assigns all his estate to persons who undertake to pay a composition to the creditors, is within the 192nd section, and when duly registered will prevent a bankruptcy, provided that the deed be for the benefit of all the creditors. *Rawlings, In re*, 9 Jur. N. S. 316; 32 L. J. Bank. 27; 7 L. T. N. S. 582. A composition deed as to *debts*, will not release a claim for unliquidated damages. *Hoggerth v. Taylor*, 37 L. J. Ex. 61. *Sharland v. Spence*, 36 L. J. C. P. 230. *Wilmot, ex parte, Thompson, in re*, 2 L. R. Ch. 795. And where a debtor's composition deed is not framed in a manner to include claims for unliquidated damages, the Court of Bankruptcy has no jurisdiction to assess the amount of damages under section 153. *Semble*, where the deed is in the form Schedule D, the assets are administered as in bankruptcy, and therefore a claim for unliquidated damages would be proveable. *Wilmot, ex parte, Thompson, in re*, 2 L. R. Ch. Ap. 795; 36 L. J. (Bkcy.) 17; 16 L. T. 650. But where the plaintiff in an action for damages continued his action after the notice of the trust-deed, and recovered a verdict, such damages ceased to be unliquidated. *Townsend, ex parte, Penton's Trust Deed*, L. C. 35 L. J. (Bkcy.) 17.

A conveyance by a debtor of his goods to two creditors for the benefit of themselves, and the other passes the property at once, on the execution of the deed by the debtor, without any assent on the part of the trustees; but the knowledge of the debtor, at the time of making the deed, that a writ of execution is out against his goods, must be taken to be the knowledge of the trustees within the proviso of s. 1 of the 19 & 20 Vic. c. 97; and, consequently, the title is not protected, and the goods are bound by the delivery of the writ to the sheriff. *Hobson v. Thelluson*, 2 L. R. Q. B. 642; 36 L. J. Q. B. 302.

(*m*) *Pleading and Evidence connected with deed and summary applications to the Court.*[1]

Future calls in respect of shares in a company may be proved under a deed of composition in the same way as under a bankruptcy. *Richmond Hill Hotel Company, King, ex parte*, 36 L. J. 718; 4 L. R. Eq. 566; 16 L. T. N. S. 785; 3 L. R. Ch. 10. A deed affords no answer to a claim by overseers for payment of twelve months' poor and other parochial rates in full, as provided by the act of 1849, s. 156. *Greatorex, in re*, 16 W. R. 143; 17 L. T. N. S. 221. But it discharges the debtor from liability to rent both accrued and to accrue. *Porter v. Kirkus*, 2 L. R. 4 C. P. 590; 36 L. J. 11.

[1] In proof of a plea of a deed under the 192nd section, it is not necessary to produce a certificate of the filing and registration. It is sufficient if the deed be produced, stamped with the seal of the court, with a memorandum indorsed and signed by the chief registrar. *Morgan v. Savin*, C. P. 16 L. T. 457. A certificate of the registration of a trust-deed under the hand of the chief registrar of the Court of Bankruptcy, and the seal of the court is *primâ facie* evidence that the affidavit required by section 192 of the Bankruptcy Act, paragraph 5, has been duly delivered to the registrar. *Waddinton v. Roberts*, 37 L. J. 253 Q. B.

A deed, by which the debtor conveys all his property to trustees for the benefit of his creditors, but which does not contain a release to him, is not a defence on equitable grounds to an action against the debtor. *European Central Railway Company v. Westhall*, 6 B. & S. 970. Where the release is in general terms, its generality may be restricted by the language of the other parts of the deed. *Haselgrove v. House*, 6 B. & S. 975.

The deed should be pleaded as after judgment, the defendant is estopped from raising the defence. *Rosse v. Bailey*, 37 L. J. Q. B. 204. It suffices in a plea, to aver, that the deed is, in all respects, an inspection deed, within the true intent and meaning of the act, and a clause, that it might be pleaded as a release valid. *Corner v. Sweet*, 35 L. J. C. P. 151. *Bailey v. Brown*, 3 L. R. Q. B. 133. But a deed, by which a debtor simply conveys all his estate and effects to a trustee to be applied and administered for the benefit of his creditors as if he had been duly adjudged bankrupt, cannot be pleaded in bar to an action by a creditor. *Clarke v. Williams*, 3 H. & C. 1001,—Ex. Ch. And a deed, in the form given in Schedule D, is no bar to an action, as it contains no release. *Eyre v. Archer*, 16 C. B. N. S. 638; 10 Jur. N. S. 802; 33 L. J. C. P. 296; 10 L. T. N. S. 615. A deed contained a release of the debtor from all actions, &c., in respect of any debt or debts, &c., contracts, &c.:—*Held*, that the release should be construed to apply only to the then existing debts of the creditors, and that the deed was good. *Haselgrove v. House*, 35 L. J. Q. B. 1; 1 L. R. Q. B. 101.

A plea of payment under a garnishee order is no defence to an action by a trustee of a creditor's deed which was duly executed and registered between the service of the garnishee order *nisi*, and the order for execution. *Wood v. Dunn*, 1 L. R. Q. B. 77; 35 L. J. 11. A composition deed, by which the debtor is released from their respective debts, is not pleadable in bar to an action for unliquidated damages. *Hoggarth v. Taylor*, 2 L. R. 2 Ex. 105; 36 L. J. 61.

A release in a creditor's deed "of all actions, suits, debts, claims, or demands," is a release of all costs and damages which a non-assenting creditor who had commenced his action against the debtor before the date of the deed could have recovered therein; and a plea of the deed generally is a good defence to the further maintenance of the action. *Tetley v. Wanless*, Ex. Ch. 2 L. R. 2 Ex. 275; 36 L. J. 153. *See Bailey v. Bowen*, 2 L. R. 133; 37 L. J. Q. B. 67.

A release in a composition deed held to be an absolute and unconditional release from all creditors whether scheduled or not, and, accordingly, that in a plea to an action by a non-assenting creditor, it was not necessary to allege a tender of the composition. *Tetley v. Wanless*, 1 L. R. Ex. 21. *M'Laren v. Baxter*, 2 L. R. C. P. 559; 36 L. J. 247. *Isaacs v. Green*, 2 L. R. Ex. 352. *Gresty v. Gibson*, 1 L. R. Ex. 112. *See ante*, p. 121.

A deed, containing a covenant by the creditors, limited by each creditor to his own acts, to indemnify the debtor from payment of any sum of money relating to any bill which the debtor may have given to the creditors respectively, invalidates the deed, and the defect is not cured by an averment that there were no creditors other than assenting creditors to whom the covenant could apply. *Oldis v. Armston*, 36 L. J. Ex. 181; 2 L. R. 16 L. T. N. S. 601. A joinder of issue to a plea of deed of arrangement necessitates the formal proof of all the requisites to the validity of such deed; and a special replication is not necessary for that purpose. *Morgan v. Savin*, 16 L. T. N. S. 333. The conditions precedent mentioned in the C. L. P. A. of 1852, s. 57, do not refer to the conditions rendered necessary to the validity of a deed of arrangement. *Id.*

As to pleading a plea *puis darrein continuance*, of a deed of arrangement in bankruptcy at Nisi Prius. See *Bond v. Weston*, 4 Fost. & Fin. N. P. Cas. 447, and *Aston v. King*, *id.* 480. In proof of a plea of a deed under the 192nd section, it is not necessary to produce a certificate of the filing and registration. It is sufficient if the deed be produced, stamped with the seal of the court. *Morgan v. Savin*, C. P. 16 L. T. 457. As against a non-assenting creditor the deed must be pleaded in discharge, and not made the subject of a summary application after judgment and execution. *Roper v. Bailey*, 37 L. J. Q. B. 204.

(*n*) *Joint and separate Creditors.*[1]

A debtor who has executed a deed in compliance with the act 1861, and is arrested under a *ca. sa.*, is entitled, by virtue of the 198th section, to be discharged from custody, though the deed is not registered till after the arrest. *Bauerselman v. Langlands*, 34 L. J. Ex. 3 S. C. Com. *Bauerselman v. Langlands*, 11 L. T. N. S. 348. *See Marks v. Hall*, 2 L. R. Q. B. 31; 36 L. J. Q. B. 40.

The Court of Bankruptcy has no power to release the debtor, and the proper course is to apply to the court out of which the process issued. *Smith, Ex parte, in re Smith*, 10 L. T. N. S. 551, C.

Defendant in an action under the Bills of Exchange Act, executed a deed of inspectorship before the time for his appearance had expired, but it was not registered until after that time, the plaintiff signed judgment and issued a *fi. fa.* after he had notice of the registration:—*Held*, that the process was irregular without the leave of the Court of Bankruptcy, and that the statutory release was effectual, though not pleaded. *Hartley v. Mare*, 34 L. J. C. P. 187. *Staffordshire Bank v. Emmott*, 36 L. J. Ex. 105. *Braun v. Wetter*, 2 L. R. Ex. 183; 36 L. J. 100. *Ames v. Colnaghi*, 3 L. R. C. P. 359.

Where the debtor has an opportunity of pleading the deed and does not, he is estopped from taking advantage of it to defeat the execution; following *Staffordshire Banking Company v. Emmett*, 1 L. R. Ex. 208; 36 L. J. 105.

The certificate of the commissioner granting the petitioning debtor protection from arrest, after the agreement for compromise has been confirmed at the second meeting, only protects the debtor from arrest, not his goods from seizure under a *fi. fa.* of a dissenting creditor. The final certificate of the commissioner, under section 13, alone has that effect. *Davies v. Percy*, 1 L. R. C. P. 256. And the debtor can only avail himself of it by application to the Court of Bankruptcy to stay the proceedings, or after certificate by application to the court in which judgment has been obtained to stay execution. *Ipstones Park Iron Ore Company v. Pattinson*, 2 H. & C. 828; 10 Jur. N. S. 427; 33 L. J. Ex. 193; 2 L. T. N. S. 806. Unless the deed contain a release. *Whitehead v. Porter*, 10 L. T. N. S. 410, Q. B.

Proceedings in outlawry are not process against the person or property of a debtor who has executed a deed under 24 & 25 Vic. c. 134, s. 192, within the meaning of s. 198; and the court will entertain and decide questions arising on such a deed, and will not send them to be determined by the Court of Bankruptcy. *Parkin v. Ernest*, 16 L. T. N. S. 713.

Registration after seizure, but before sale, defeats an execution. *Milner v. Rawlings*, 36 L. J. Ex. 250.

The certificate of registration of a creditor's deed is no protection to a debtor against an arrest on a judgment obtained after the registration upon a debt incurred after the deed. Sheriff held liable in an action of escape under such circumstances. *Williams v. Rose*, 3 L. R. Ex. 5; 37 L. J. 12; 17 L. T. 253.

Where a debtor has executed a valid deed, duly registered, and subsequently property of the debtor has been taken in execution, the practice is not to set aside the execution, but to order the sheriff to withdraw. *Allen v. Cucksey*, 16 L. T. 385. *See Hartley v. Mare*, 34 L. J. C. P. 187.

The court has no jurisdiction to order the trustees of a deed, executed under the 192nd section, to pay the costs of a petitioning creditor who had obtained an adjudication subsequently to the execution of the deed, but in respect of which further proceedings had been stayed, under sect. 199, upon the deed being duly registered. *Jones, Ex parte, in re M'Turk*, 10 Jur. N. S. 812; 12 W. R. 1094; 10 L. T. N. S. 804, C.

Plaintiff in an action on the Bills of Exchange Act was served with notice that defendant had executed a composition under sec. 192, but he proceeded with his action, signed judgment, and issued execution. On the day before the sale by the sheriff, defendant's solicitor applied to the bailiff in possession to abstain from selling, which he declined doing except on an undertaking to pay debt and costs; this the solicitor gave, but at that time the deed had been registered; defendant paid the amount to the sheriff under protest:—*Held*, defendant was entitled to a return of the money less the sheriff's fees. *Milner v. Rawlings*, 2 L. R. Ex. 249. *Hartley v. Mare*, 34 L. J. C. P. 187.

[1] A deed otherwise valid is not rendered invalid by reason of there being joint and separate creditors, and also joint and separate estates, and that the deed places the joint and separate creditors on the same footing. Neither is such a deed rendered inoperative against non-executing creditors by the 197th section. *Walker v. Nevill*, Ex. 3 H. & C. 403. *See Rixon v. Emary*, 37 L. J. C. P. 243. *Tomlin v. Dutton*, id. Q. B. 153.

A deed executed by partners conveying all their estate and effects to trustees, to be applied for the benefit of their creditors, as if they had been duly declared bankrupts (Schedule D.), cannot be pleaded either legally or as an equitable defence to an action by a separate creditor of one of the partners. *European Central Ry. Co. v. Westall*, Q. B. 1 L. R. Q. B. 167; 35 L. J. 9. *Ex parte, Oldfield re Oldfield*, 11 L. T. N. S. 756.

A creditor's deed otherwise valid, s. 192, containing a release to the debtor of all debts, claims, and demands, held not to be vitiated by a proviso reserving the rights of creditors against third persons (sureties, &c.), liable on any joint security. *Keyes v. Elkins*, 34 L. J. Q. B. 25.

A deed between two partners and their joint creditors only is not valid under the

(*o*) *Fraudulent deeds and verifications of debt.*[1]

(*p*) *Rights and liabilities of Trustees.*[2]

(*q*) *When an Act of Bankruptcy.*[3]

III. In Bankruptcy under 12 & 13 Vic. c. 106.[4]

IV. Under 31 and 32 Vic. c. 104, to be cited as Bankruptcy Amendment Act, 1868, to commence Oct. 1868.[5]

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act of 1861, and cannot bind non-assenting separate creditors. *Tomlin v. Dutton*, 37 L. J. Q. B. 153. *Dixon v. Eman*, *id.* C. P. 243.

[1] Although the 192nd section of the act of 1861 is general in its terms, and renders deeds under it binding on all the creditors, it cannot sanction deeds which are tainted with fraud, or such as are made or entered into otherwise than with a *bonâ fide* view to the benefit of the creditors assenting and non-assenting alike. *Ex parte Cowen, in re Cowen*, 16 L. T. N. S. 469; 2 L. R. Ch. 563, L. J. *Dauglish v. Tennant*, 2 L. R. Q. B. 49; 39 L. J. Q. B. 10. *Exley v. Inglish*, 37 L. J. Ex. 145. *Exley v. Inglis*, 37 L. J. Ex. 145.

An affidavit must be delivered to the chief registrar with the deed. *Walker v. Nevill*, 34 L. J. Ex. 73.

[2] When a deed is executed by a debtor, conveying his property to trustees to be administered by them as in bankruptcy, the effect is to make the trustees as fully masters of the property, with all the incidents attaching to that ownership, as the assignees would have been if the debtor had actually become a bankrupt. *Bank of England, ex parte, Price, in re*, 36 L. J. Bank. 24; 16 L. T. N. S. 760.

A debtor and his creditors entered into a deed of inspectorship. Before the deed was executed by the debtor he had ordered of the plaintiff goods. The inspectors, by an order to which they signed their names for the debtor, requested the plaintiff to send the goods:—*Held*, that the inspectors were not personally liable for payment. *Redpath v. Wigg*, 4 H. & C. 432, Ex. Ch.; 35 L. J. Ex. 211; 1 L. R. Ex. 335.

The law of bankruptcy that property coming to the bankrupt before he obtains his discharge vests in the assignee, does not apply to the case of a trust-deed for creditors in the form Schedule D, Bankruptcy Act, 1861. *In re Wizard's Trust*, L. J. 2 L. R. 1 Ch. Ap. 588; 35 L. J. 104. A trustee under a deed of trust stands in the same relation to the creditors that an assignee does, and he is bound to submit to the examination required by s. 136 of 24 & 25 Vic. c. 134. *Beale, in re, ex parte Lawrence*, 9 Jur. N. S. 935; 32 L. J. Bank. 61; 8 L. T. N. S. 407, C.

The 24 & 25 Vic. c. 134, s. 197, has the effect of making 12 & 13 Vic. c. 106, s. 145, applicable to trust-deeds; and the trustees have an election as to whether they will take a lease granted to the debtor, and that on their not so electing, the debtor may give up the same to the lessor. *Porter v. Kirkus*, 36 L. J. C. P. 311; 2 L. R. C. P. 590; 17 L. T. N. S. 85. As to the lien of a trustee, *see* 3 L. R. Q. B. 233.

[3] A creditor's composition deed, in the form Schedule D, was executed by the debtors, but was destroyed by a third party before it was signed by any of the creditors:—*Held*, the deed was an act of bankruptcy. *Lees v. Whiteley*, 1 L. R. 2 Eq. 143; 35 L. J. 412. *See Re Wensley*, 32 L. J. N. S. Bank. 23. As to costs of an abortive arrangement, *see* 37 L. J. Ex. 265.

[4] In carrying out a deed of arrangement under the 211th section of the 12 & 13 Vic. c. 106, it is sufficient that the proposed manner of satisfying creditors should be substantially realised. *Naylor v. Mortimore*, 17 C. B. N. S. 207; 10 Jur. N. S. 1001; 33 L. J. C. P. 273; 13 W. R. 47; 10 L. T. N. S. 903.

[5] This act provides for notices to be given, proof by affidavit of debts, for the examination of both debtor and creditor, and that the value of a creditor's debt shall be taken at the amount due after deducting value of securities.

Sect. 1 enacts, No deed, &c. entered into between a debtor and his creditors relating to debts, &c. shall be as valid, &c., as if they were parties to the same, unless in addition to the conditions to be observed according to the Act of 1861, the conditions therein named shall be observed. That is with such deed shall be delivered to the chief registrar a list showing, to the best of the belief of the debtor or person by whom the list is made, the debts and liabilities of the debtor, and the times when such debts were contracted, and the considerations for the same, the names, &c. of his creditors, and the amounts due to them, and the securities held by them, and a statement showing, to the best of the belief of the person by whom the statement is made, the debtor's property and credits, and value thereof. The debtor may, by leave of the court, add to or amend such statement, and every amendment shall be verified by affidavit, which shall contain the reason why such amendment has been rendered necessary.

S. 2. Notice to be given of leaving list. &c. in London Gazette, &c., and inspection of list and statements allowed.

S. 3. Creditors assenting to composition deed to prove debt by affidavit or declaration, and none other to be computed in the requisite majority in number, and three-fourths in value after deducting the value of the securities held by him.

COMPOUNDING Penal Actions and Criminal Proceedings. 3 Ab. 161.

COMPROMISE of Suit.[1] 3 Ab. 163. *See* also Attorney; Barrister.

CONCEALING Birth of Child. *See ante*, Child, Concealment of Birth.

CONDITIONS.[2] 3 Ab. p. 169. *See* Bond; Contract.

CONFESSION.[3]

CONSOLIDATING Actions.[4]

S. 4. Affidavits or declarations of proof to be filed with chief registrar. And on a statement in writing power is given to creditors to inspect same.

S. 5, provides for examination of debtor or creditor.

By s. 6, notice to debtor and trustees of deed of time and place for examination to be given.

By s. 7, in change from bankruptcy to arrangement creditors assenting to prove, &c.

By s. 8, the court shall have and exercise all jurisdiction given by Act 1861; and this act, under any deed by an arranging debtor, shall, if the debtor is a bankrupt, be the court having jurisdiction in the bankruptcy, and if he is not a bankrupt, the court in which a petition by him for adjudication of bankruptcy against himself would at the time of the execution or (in case of registration) of the registration of the deed or instrument be required to be filed.

By s. 9, power to make general orders is given.

By s. 10, s. 202 of the Act, 1861, shall extend to notices concerning deeds made by arranging debtors.

See general order Oct. 1868, issued in pursuance of this Act.

[1] Circumstances may exist under which an agent may have authority to compromise a claim, although under the contract in question, disputes were to be settled by two persons mutually chosen by buyer and seller, *Baker v. Alexander*, 35 L. J. C. P. 217.

A compromise cannot be sustained if there is knowledge on the one side which is withheld from the other. This rule is not less applicable to compromises approved of by the court on behalf of infants, *Id.* A compromise sanctioned by the court may be set aside upon original bill; a bill of review is not necessary for the purpose. *Brooke v. Mostyn*, 10 Jur. N. S. 1114; 13 W. R. 1115; 11 L. T. N. S. 392—C. *Trigge v. Lavallée*, 9 Jur. N. S. 261; 8 L. T. N. S. 154—P. C. *Stainton v. Carron Company*, 10 Jur. N. S. 783. *Mallen v. Hussey*, 35 L. J. C. 649. *Green v. Crockett, Crockett v. Green*, 34 L. J. C. N. S. 606. *Bansfield v. Bansfield*, 31 Bea. 591.

Where a bill in equity alleges a judgment obtained by fraud, and a subsequent compromise, and seeks to set aside the whole transaction on the ground of fraud, or in default to have the compromise carried out, and the court is of opinion that the case of fraud fails, it will not enforce the compromise, but the whole bill must be dismissed. *Cawley v. Poole*, 1 H. & M. 50.

As to agreements of compromise, the French law on this subject, as well as the English and Scotch law, adopts the rules of the civil law. *Regge v. Lee*, 9 Jur. N. S. 261.

Fresh suit partly on same grounds as previous suit barred by agreement on trial of first suit not to institute other proceedings. *Rowley v Rowley*, 35 L. J. P. & M. 110.

[2] A. agreed to make alterations in a house, and "to complete the whole work necessary by the 14th of June;" B. "in consideration of these conditions being fulfilled," agreed to take the house on the 24th of June for three years, with the option of a lease for seven, fourteen, or twenty-one years:—*Held*, that the completion of the whole work by the 14th of June was a condition precedent to B.'s liability to take the house on the 24th. *Tidey v. Mollett*, 16 C. B. N. S. 298; 10 Jur. N. S. 800; 33 L. J. C. P. 235. *Parsons v. Evans*, 12 W. R. 743—Q. B.

In an agreement between A. and B., not under seal, it was stipulated that as soon as B. should have executed certain specified repairs, A. would lease certain premises to him for thirty-five years, with a proviso, that if the rent should be in arrear, or if B. should make default in the observance and performance of the covenants and conditions, then it shall be lawful for A. to enter and expel B. The repairs not having been done by the time agreed on:—*Held*, that A. was entitled to re-enter. *Hayne v. Cummings*, 16 C. B. N. S. 421; 10 Jur. N. S. 773; 10 L. T. N. S. 341.

[3] One of the firm who employed the prisoner, having called him up into the private counting-house in the presence of another of the firm and two officers of police, said, "I think it is right that I should tell you that, besides being in the presence of my brother and myself, you are in the presence of two officers of the police; and I should advise you that to any question that may be put to you you will answer truthfully, so that if you have committed a fault you may not add to it by stating what is untrue;" and having shown a letter to him, which he denied to have written, added, "Take care; we know more than you think we know." The prisoner thereupon made a confession:—*Held*, that these words did not import an inducement or threat; and that evidence of the confession was admissible. *R. v. Jarvis*, 37 L. J. M. C. 1.

[4] An action by a husband for an injury done

CONSPIRACY.[1] 3 Abr. 179.

CONSTABLE and Police.[2]

to himself, may be consolidated with a separate action by the husband and wife for an injury done to the wife at the same time and place. *Morley v. Midland Railway Company*, 3 F. & F. 961.

[1] Prisoners were found guilty upon an indictment charging them with conspiring to solicit and procure an unmarried girl, of the age of seventeen, to become a common prostitute:—*Held*, that although common prostitution was not an indictable offence, it was unlawful, and the indictment good, without averring that the prosecutrix was chaste at the time of the conspiracy. *Reg. v. Howell*, 4 F. & F. 160.

On an indictment against a foreigner, a carpenter on board a foreign merchant ship, for conspiring in this country, with the foreign owner, to destroy or cast away the vessel, to prejudice the owners, it being admitted that the prisoner was a party to the scuttling of the ship on the high seas, the jury was directed to consider whether the prisoner was a party in this country to a previous conspiracy to destroy the ship, not limited to its destination on the high seas, the principal offence not being tryable in this country. *Reg. v. Kohn*, 4 F. & F. 68.

The defendants were tried at a quarter sessions upon counts of which charge a conspiracy, "by divers false pretences against the statute in that case made and provided, the said R. B. of his monies to defraud, against the form of the statute:"—*Held*, sufficient that it must be taken, after verdict, that the conspiracy was one of which a court of quarter sessions had cognisance. *Latham v. Reg.* (in error), 9 Cox, C. C. 516; 10 Jur. N. S. 1145; 33 L. J. M. C. 197.

Upon an indictment against two persons and three of their servants for conspiracy to defraud insurance offices, by making false representations or false lists of the goods destroyed:—*Held*, that proof that the false lists were made out by the servants, knowing them to be false, and that the master had the means of knowing that the statements subsequently made by the servants to conceal the real facts were false, was not sufficient to sustain the charge of conspiracy. *Reg. v. Barry*, 4 F. & F. 389.

[2] Under 3 & 4 Vic. c. 88, ss. 27, 28, the quarter sessions may erect a single parish into a separate police district. *Knowling, Ex parte*, 6 B. & S. 195; 34 L. J. M. C. 68.

A constable has no right to arrest and handcuff a disorderly person known to him, unless he is committing or on the point of committing a breach of the peace, and the person so attempted to be arrested, and his companions, are justified in using necessary force to prevent such an arrest. *Reg. v. Lockley*, 4 F. & F. 155.

Under 2 & 3 Vic. c. 71, s. 24, persons charged before a metropolitan police magistrate with having in their possession or conveying anything suspected of being stolen, and not accounting to the satisfaction of the magistrate for such possession, shall be deemed guilty of a misdemeanour. And by 2 & 3 Vic. c. 47, s. 66, a constable may search and detain any person reasonably suspected of having or conveying anything stolen or unlawfully obtained:—*Held*, that the power of a magistrate under these enactments extends only to persons who are at the time conveying the property, *i. e.* to street offences, and not to persons who may have such property in a house or shop. *Hadley v. Perks*, 1 L. R. Q. B. 444; 12 Jur. N. S. 662: 35 L. J. M. C. 177; 14 L. T. (N. S.) 325, Q. B.

A magistrate's warrant, in the form given in 11 & 12 Vic. c. 43, schedule, for the apprehension of a person who had been convicted of drunkenness and ordered to pay a fine, or to be imprisoned, and addressed to "the constable of G." can only be executed by the parish constable of G., and not by a police-constable stationed at G. *Reg. v. Sanders*, 1 L. R. 1 C. C. R. 75; 36 L. J. M. C. 87.

The 24 Geo. 2, c. 44, s. 6, as to the demand of a copy of the warrant, and refusal thereof; and as to the 2 & 3 Vic. 93, s. 8, and 1 & 2 Wm. 4, c. 41, s. 19, which require a calendar month's notice of action to be given to any constable for anything done in the execution of his office, do not apply to actions of replevin. *Gay v. Matthews*, 4 B. & S. 425, Ex. C.

A police constable who makes an arrest under a warrant from a justice of the peace for disobedience to a bastardy order, is bound to have the warrant in his actual possession at the time, although the officer was not called on to show it. *Galliard v. Laxton*, 2 B. & S. 363.

An indictment charged that A. and B., being in the custody of two police constables on a charge of felony, A. and B. committed an assault upon them with intent to resist their lawful apprehension, that the constables called upon defendant for assistance to prevent the assault, and that defendant refused to aid the constables in the execution of their duty:—*Held*, that it was sufficient to allege a refusal to assist without alleging that defendant did not assist. *Reg. v. Caleb Sherlock*, 1 L. R. C. C. R. 20; 35 L. J. M. C. 492; 10 L. T. 385.

On a summons taken out under the Municipal Corporation Act, 5 & 6 Wm. 4, c. 76, s. 81, for assaulting a constable in the execution of his duty, the accused cannot be convicted of a common assault under 24 & 25 Vic. c. 100, s. 42. *Reg. v. Brickhall*, 32 L. J. M. C. 157.

A charge-sheet is sufficient proof of the signatures which it contains. *Ross v. Lascelles*, 15 L. T. N. S. 293.

CONSUL.[1]

CONTAGIOUS Diseases, Naval and Military Stations.[2]

CONTEMPT of Court.[3]

CONTINUING Nuisance. *See post*, Nuisances.

CONTINUING Trespass. *See* Trespass.

A road and bridge built under a private act of the 36 Geo. 3, and thereby declared subject to 13 Geo. 3, c. 84, are under the exemptions in favour of the police, confirmed by 3 & 4 Vic. c. 88. *Longlands v. Andrews—Longlands v. Doling*, 11 Jur. N. S. 412; 34 L. J. M. C. 90, Exch.

An allowance granted by order of the Secretary of State to an officer of the metropolitan police, charged on the superannuation fund, is not payable as matter of right, and may be revoked at any time by the Secretary of State in his discretion. *Reg. v. Metropolitan Police (Receiver)*, 4 B. & S. 593; 33 L. J. Q. B. 52.

As to orders for payment of special constables out of county rate under 1 & 2 Wm. 4, c. 41, ss. 1, 13, *see Reg. v. the Justices of Marylebone*, 37 L. J. M. C. 181.

[1] The 6 & 7 Vic. c. 94, s. 1, empowers the Queen to regulate by order in council the jurisdiction of the British consul in the Ottoman Empire, within the limits within which it existed by usage or suffrance. Jurisdiction is given to proceedings *in rem* in cases of collision. *The Laconia—The Colchide*, 33 L. J. Adm. 11; 1 B. & L. 117, P. C.; 12 W. R. 90. But the remedy is not a common law remedy. *Pappyanni v. Russian Steam Navigation and Trading Company*, 9 Jur. N. S. 1160, P. C.

The protest by a foreign consul against the prosecution of a suit for wages against a ship of his country does not deprive the Admiralty Court of its jurisdiction, but makes the exercise of that jurisdiction discretionary. *The Octavie*, 33 L. J. Adm. 115.

A seaman having remained ashore all night at a foreign port, the master went to the consul and obtained his certificate, with an indorsement thereon that the seaman had deserted, under 17 & 18 Vic. c. 104, s. 107. In a summary proceeding before justices in this country by the seaman to recover his wages, the consul's certificate is not conclusive evidence of the fact of desertion. *Lewis v. Jewhurst*, 15 L. T. (N. S.) 275. *See Laconia*, 1 B. & L. 117.

[2] The 27 & 28 Vic. c. 85, to cease from 30th September, 1868, except as to proceedings previously taken. 29 & 30 Vic. c. 35, substituted.

[3] Every court of record has attached to its jurisdiction, as inherent in it, the power to punish for contempt; but if the court is one of inferior jurisdiction, the Queen's Bench has authority to intervene, and prevent any usurpation of jurisdiction by it; and if it treats conduct as a contempt, which there is no reasonable ground for so treating, may interfere to protect the party upon whom the power has been improperly exercised. *Pater, Ex parte*, 5 B. & S. 299. Quarter sessions has the power of imposing a fine on a barrister who in the course of his professional duty is guilty of a contempt. *Re Pater, id.* 10 L. T. (N. S.) 376; 10 Jur. N. S. 972. Nor will the Queen's Bench interfere where sessions has reasonable grounds for punishing.

Threatening a petitioner in the Divorce Court unless he withdrew proceedings is a contempt. *Re Muloch*, 32 L. J. M. C. 205. *See* 10 Jur. N. S. 1188.

It is a contempt to publish in a newspaper, after the affidavits have been filed, but before the hearing, an article attributing falsehood to the persons who had made the affidavits. *Felkin v. Herbert*, 10 Jur. N. S. 62; 9 L. T. N. S. 635.

But where creditors presented a petition for winding up a company, before the petition came on to be heard, the chairman of the company inserted an advertisement in the daily papers, accusing the petitioners of corrupt motives. The Court refused to commit, but required an undertaking not to repeat the advertisement. *Re the General Exchange Bank*, 12 Jur. N. S. 465, Ch.; 14 L. T. (N. S.) 582.

An order for sequestration for contempt granted against a public body having property vested in it for various public purposes, it appearing to the court that there was property on which the sequestration would operate. *Banbury Board of Health*, 11 Jur. 1010.

The Court having issued a monition to defendant to replace certain bones and the earth with them in the burial-ground before a certain day. The defendant failed to comply, alleging as a reason that the field in which such bones and earth had been placed was no longer in his occupation or possession, is guilty of a contempt. *Adlam v. Colthurst*, 37 L. J. Ex. 6.

Although courts of justice have power to remove their officers if guilty of crime or moral delinquency, rendering them unfit to be entrusted with a professional status, they may be suspended from practising, yet for an offence in the character of suitors, and not as officers, they can only be fined and imprisoned for contempt. *In re Wallace*, 36 L. J. P. C. 9.

The officer, on proceeding to the premises of the defendant to execute a *fi. fa.*, found a person claiming under a bill of sale in possession of the goods, by whom, notwithstanding the service upon him of an inter-

CONTRACTS. 3 Ab. 193. *See* Fixtures; Frauds; Statute of; Guarantee; Insurance; Landlord and Tenant; Lease; Tender; Vendor and Purchaser; Warranty; Work and Labour.

I. Relative to the Creation of Contracts, p. 128.
II. „ Stamp. *See* post, Stamp.
III. Who may Contract. *See* Corporations; Infant; Husband and Wife; Joint-Stock Company; Lunatic; Partner; Principal and Agent; Trustee.
IV. Of the Consideration, p. 129.
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VI. Effect of Altering Contract, p. 130.
VII. Apportionment of Contracts where Part is Illegal, p. 130.
VIII. Rescinding or determining Contract, p. 130.
IX. Performance of Contracts, p. 130.
X. Excuse for Non-Performance, p. 131.

I. Relative to the Creation of Contracts.[1]

pleader summons, and the efforts of the officer to prevent it, the goods were sold and carried away:—*Held*, that the forcible dispossession of the goods by the claimant, if even the true owner, amounted to contempt of court. *Cooper v. Asprey*, 32 L. J. Q. B. 209; 9 Jur. N. S. 1198. *See In re M'Dermott*, 1 L. R. P. C. 260.

[1] The rights of parties to a contract are to be judged of by that law which they intended, or rather by what they may justly be presumed to have bound themselves. *Lloyd v. Guibert*, 6 B. & S. 100; 33 L. J. Q. B. 241.

A proposal to receive tenders for certain things to be sold (specifying no limitation or qualification), and an acceptance (also specifying no limitation or qualification), is a contract for the whole. *Thorn v. Public Works Commissioners*, 32 Beav. 490.

The term "preposé" means a person standing in the same relation to "commettant" as "domestique" to "maître;" and that to render the "commettant" liable for the negligence of the "preposés" the latter must be acting "sous les ordres, sous la direction et la surveiliance du commettant." *Edouard v. Saisse*, 2 L. R. P. C. 152; 35 L. J. 17.

Although where a man, owing a simple contract debt, executes an instrument under seal which admits the debt, the debt is not thereby converted into a speciality debt, yet if, by such deed, he agrees to give a security which would create a speciality debt—in the present instance a mortgage—that converts the debt into a speciality debt. *Saunders v. Milsome*, 2 L. R. Eq. 573.

Where there is a parol agreement between two persons, and a subsequent written agreement, which does not embrace all the terms of the parol agreement, it is a question of fact for the jury whether it was the intention of the parties that there should be a distinct parol agreement collateral to the written agreement, and evidence of the terms of the parol agreement is admissible. *Lindley v. Lacey*, 10 Jur. N. S. 1103; 34 L. J. C. P. 7; 11 L. T. N. S. 275.

Where a contract is to be made out, partly by written documents and partly by parol evidence, the whole becomes a question for the jury. *Bolckow v. Seymour*, 17 C. B. N. S. 107.

A document purporting to be a contract, signed by the parties, is not necessarily so; and it is competent for either of the parties to show by parol evidence that it was not their intention, in signing, that it should operate as a contract, and that the real contract between them was not in writing. *Rogers v. Hadley*, 2 H. & C. 227. *See Bruff v. Conybeare*, 13 C. B. 263.

A corporation will be liable on a contract, though not under seal, where the goods have actually been supplied to and accepted by the corporation, and are such as must of necessity be from time to time supplied to the corporation for the purposes for which it was incorporated. *Clarke v. The Cuckfield Union*, 31 L. J. Q. B. 349. *Nicholson v. Bradford Union*, 1 L. R. Q. B. 620; 35 L. J. 176.

An agreement between the Board of Admiralty and a contractor for the carriage of mails and other services for eleven years,

IV. Of the Consideration.[1]

V. The Construction of Contracts.[2]

by steam-vessels, for an annual subsidy "to be provided by Parliament." The agreement contained covenants on the part of the contractor as to always having vessels ready for the conveyance of the mails:—*Held*, that a covenant on the part of the Board of Admiralty to allow the contractor to carry the mails and to earn the subsidy was not to be implied. *Churchward v. The Queen*, 1 L. R. Q. B. 173.

[1] A contractor for sale or hire with the knowledge that the other contracting party intends to apply the subject-matter of the contract to an immoral purpose cannot recover upon the contract; it is not necessary that he should expect to be paid out of the proceeds of the immoral act. *Pearce v. Brooks*, 1 Law Rep. Ex. 213; 35 L. J. 134, Ex.; 12 Jur. N. S. 342; 14 L. T. N. S. 288. Or on an agreement connected with a claim for a house used as a brothel. *Smith v. White*, 1 L. R. Eq. 626.

A promise not to apply for costs, under the Bankruptcy Act 12 & 13 Vic. c. 106, s. 85, is a sufficient consideration to support a contract to pay the amount of such costs. *Bracewell v. Williams*, 2 L. R. C. P. 196. But not to conduct proceedings in bankruptcy so as to injure as little as possible the debtor's credit.

Where a contract to sell which is tainted with illegality is followed by a delivery of the thing sold, a third party cannot rely on the illegality to defeat the title of the purchaser, *Bayot v. Arnott*, 15 W. R. 812 Exch., but no action lies to enforce contracts connected with the illegality.

Although a person who, in a state of drunkenness such as to render him incapable of any reflection or deliberative act, buys property at an auction, pays the deposit, and signs the contract, is not liable in an action on the contract, yet, semble, he may be liable for the expenses of a re-sale, rendered necessary by his wrongful act. *Hawkins v. Bone*, 4 F. & F. 311. *Wiltshire v. Marshall*, 14 L. T. 396.

A contract to stifle a criminal prosecution is illegal. *Williams v. Bayley*, 35 L. J. Ch. 717.

A company will not be bound by the contract of its promoters, where the thing contracted to be done is *ultra vires* of the company, and to that extent Lord Cottenham's doctrine, that a company is bound by the engagements of the promoters, must be taken to be overruled. *Shrewsbury (Earl) v. North Staffordshire Railway Company*, 12 Jur. N. S 63; 1 L. R. Eq. 593; 35 L. J. Chanc. 156; 13 L. T. N. S. 648. *Taylor v. Chichester and Midhurst Railway Company*, Ex. Ch. L. R. 2 Ex. 356.

A. discounted bills to which he had forged his father's signature; the holders of the forgeries, working on the fears of the father, but without holding forth any direct threat, and without any distinct promise not to prosecute, obtained from the father security for the amount of the bills:—*Held*, that the security was void, as having been obtained by improper pressure. *Williams v. Bayley*, 1 L. R. H. L. 200; 12 Jur. N. S. 875, 35 L. J. Chanc. 717; 14 L. T. N. S. 802, H. L.

[2] The terms "condition and covenant" are not necessarily confined to instruments under seal. *Hayne v. Cummings*, 16 C. B. N. S. 421; 10 Jur. N. S. 773, 10 L. T. N. S. 341.

The rule governing the interpretation of a contract made in one country, to be performed wholly or partly in another country, is, that the law of the country where the contract is made governs as to the nature of the obligation; and the interpretation of it, if the parties to the contract are either subjects of a power there ruling, or as temporary residents, owe that power a temporary allegiance. In either case they must be understood to submit to the law there prevailing, and agree to its action on their contract. *P. and O. Company v. Shand*, 3 Moore, P. C. C. N. S. 272.

It is immaterial that such agreement so to be ruled by the *lex loci contractus* is not so expressed in terms.

Questions of procedure are to be determined by the *lex fori*, not by the *lex loci contractus*. *Mac Farlane v. Norris*, 2 B. & S. 783. *See* 33 L. J. Q. B. 273. *Semble*, that set-off is matter of procedure, and, as such, determinable by the *lex fori*. *Id.*

In an action on a contract where the question at issue has no relation to the manner of performing the contract, or to the consequences of non-performance, and relates entirely to the effect of the transaction at the place where it was entered into, the liability of the defendant must be determined by the *lex loci contractus*. *Scott v. Pilkington; Munroe v. Pilkington*, 2 B. & S. 11.

If a party enters into an arrangement which can only take effect by the continuance of a certain existing state of circumstances, there is an implied engagement on his part that he shall do nothing of his own motion to put an end to that state of circumstances under which alone the arrangement can be operative. *Stirling v. Maitland*, 5 B. & S. 840. *Bruff v. Conybeare*, 17 L. T. 664.

Contract between a merchant and manufacturer for the purchase of 900 pieces of cloth:—"Delivering on April 17; complete 8th May." The contract was partly written and partly printed, the word "delivering" being printed. None of the cloth was delivered on the 17th of April, and on the following day the purchaser gave notice that he rescinded the contract:—*Held*, by 2 Barons, that it was not necessary for plaintiff to deliver any part on the 17th of April;

VI. Effect of altering Contract.[1]

VII. Apportionment of Contracts where Part is Illegal.[2]

VIII. Determining and Rescinding Contracts.[3]

IX. Performance of Contracts.[4]

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that the contract was satisfied by the delivery of the whole by reasonable proportions, and at reasonable intervals between the 17th of April and 8th of May:—*Held*, by the other, that it was essential that a reasonable quantity should have been delivered on the 17th of April. *Coddington v. Paleologo*, 2 L. R. Ex. 193; 36 L. J. 73.

A. in consideration that B. would transfer to him the goodwill of his business as a surgeon, promised to pay B. one-fourth part of his earnings for and in respect of each of four successive years, if he should be living at the end of each respective year:—*Held*, that there was an implied covenant by A. to carry on the business. *M'Intyre v. Belcher*, 10 Jur. N. S. 239, C. P.

Where there is a contract for services for a certain time with a right of renewal, the option is with the employer. *Meason v. Finnigan*, 9 L. T. N. S. 229.

[1] A valid contract cannot be altered or waived unless both parties assent, at the same time, to the proposal. *Whittaker v. Fox*, 14 W. R. 192. *See* 17 L. T. 664. As to renouncing, *see Danube, &c. Railway Company v. Xenos*, 13 C. B. N. S. 825, Ex. Ch.

[2] A contract tainted with original fraud cannot be enforced, although part of the consideration for a substituted agreement be legal. *Clay v. Ray*, 17 C. B. N. S. 188, S. P. *Geere v. Mare*, 2 H. & C. 339; 33 L. J. Ex. 50.

Where a contract may be illegal as in restraint of trade and the condition has been performed, the plaintiff is entitled to recover the consideration. *Bishop v. Kitchin*, 38 L. J. Q. B. 20.

[3] Where there is a written contract for the sale and purchase of goods of the value of 10*l.* or upwards, and afterwards the parties agree by parol to rescind it, and come to a new parol contract, not only is the new contract invalid, but the written one remains in force. *Noble v. Ward*, 1 L. R. Ex. 117; 35 L. J. 81.

Where a party retains any benefit derived from a contract induced by fraud, ignorance of the fraud at the time of such benefit accrued will not entitle him to repudiate the contract. *Savage v. Canning*, 16 W. R. 133, Ir. C. P. The rule that a party cannot repudiate an executed contract on the ground of fraud, unless on the condition of restoring the other party to his original position, is not affected by the fact that the latter has by his acts rendered such restoration impracticable. *Id.*

Where a person believes that he has been misled by representations which are false or deceptive, into taking shares in a proposed company, it is his duty to raise the objection at an early period, and to be guilty of no needless delay. *Venezuela Company v. Kisch*, 2 L. R. H. L. 39. *Aberaman Ironworks v. Wickens*, 5 L. R. 5 Ex. 485; 18 L. T. 305. *Kennedy v. Panama* R. W. C. 8 B. & S. 571.

The death of a party to be paid by instalments for work to be performed does not prevent his representatives recovering instalments actually due, the right being vested. *Stubbs v. Holywell*, R. 6, 36 L. J. Ex. 166.

[4] Where there is a positive contract to do a thing, not in itself unlawful, the contractor must perform it or pay damages for not doing it, although, in consequence of unforeseen accidents, the performance of his contract has become unexpectedly burthensome or even impossible; but this rule is only applicable when the contract is positive and absolute, and not subject to any condition either express or implied. *Taylor v. Caldwell*, 3 B. & S. 826. As where plaintiff contracted with defendant to erect certain machinery at stated prices on the premises of the defendant, the latter erecting the necessary brickwork, &c. to which the machinery was to be affixed, plaintiff to keep the whole in order for two years. Before the works were completed an accidental fire occurred, which destroyed the defendant's premises and the machinery set up by plaintiff:—*Held*, that there was an implied contract by the defendant to provide and keep in a fit state the buildings to enable plaintiff to perform his contract. *Appleby v. Meyers*, 1 L. R. 1 C. P. 615; 35 L. J. 295; 36 *id.* 33. This judgment was reversed in Ex. Ch. as each party was excused from further performance. *Appleby v. Meyers*, 3 L. R. C. P. 651; 36 L. J. 331; 16 L. T. 669. S. P. *Boast v. Firth*, 3 L. J. N. 239.

A representation, a statement or an assertion made by one party to the other, before or at the time of the contract, of some matter or circumstance relating to it, is not an integral part of the contract, and the contract is not broken, although the representation proves to be untrue, unless it was made fraudulently, and except in the cases of marine policies of insurance. *Behn v. Burness*, 9 Jur. N. S. 620; 32 L. J. Q. B. 204; 8 L. T. N. S. 207, Exch. Cham.

A. was retained by a resolution of the directors of a company, as broker, to dispose of the shares therein, upon the terms that he was to receive 100*l.* down, and 400*l.* more when all the shares were allotted. By the act of the directors, without any de-

X. Excuse for Non-performance.[1]

CONTRIBUTORIES. *See* Joint-Stock Companies.

CONVICTION. 3 Abr. 217. Indictment for second Offence after former. *See* Indictment; Larceny.

I. Relative to the Form of the Conviction.[2]

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fault on A.'s part, the company was wound up before the whole of the shares had been disposed of:—*Held*, that A. was entitled to recover, as damages for the breach of contract, such a sum as a jury should think reasonable. *Inchbad v. Western Neilgherry Coffee, Tea, and Cinchona Plantation Company (Limited)*, 17 C. B. N. S. 733.

Contracts for personal service may be discharged by permanent, but not temporary illness. *Boast v. Firth*, 38 L. J. C. P. 1; 4 L. R. 1.

[1] Where parties must from the beginning have known that a contract could not be fulfilled unless when the time for the fulfilment of the contract arrived, some particular specified thing continued to exist, so that, when entering into the contract, they must have contemplated such continuing existence as the foundation of what was to be done; then, in the absence of any express or implied warranty that the thing shall exist, the contract is not to be construed as a positive contract, but as subject to an implied condition that the parties shall be excused in case, before breach, performance becomes impossible from the perishing of the thing, without default of the contractor. Hence an agreement to let the use of a music-hall for four specified days, for a series of concerts, but before the first day arrived the music-hall was accidentally destroyed by fire, parties are discharged from the contract by the destruction of the thing agreed to be let before the time for performing the agreement. *Taylor v. Caldwell*, 3 B. & S. 826; 32 L. J. Q. B. 164; 8 L. T. N. S. 356. *Duthie v. Hillon*, 3 L. J. N. 246. *See Appleby v. Meyers*, *ante*. *Jonassohn v. Young*, 32 L. J. Q. B. 385, *infra*.

Plaintiffs expecting 576 bales of cotton per "Golden Age," sold 202 to C., 123 to defendants, and afterwards 154 more to defendants, and 97 to G. The contracts provided "that should the cotton, or any portion thereof, not arrive from loss of vessel, &c., the contract for the whole, or such portion, was to be void." Only 275 arrived deliverable. Plaintiffs delivered 60 to C., 30 to G., 33 to defendants under their first contract, and tendered them 152 in fulfilment of the second contract, which the defendants refused to accept:—*Held*, they were bound to accept, notwithstanding that their earlier contract was broken. *Arbuthnot v. Streckeisen*, 35 L. J. C. P. 305.

J. being authorised by power of attorney from C. & Co. to sell certain mines upon commission, entered into a contract for the sale to defendants. In the contract J. was described as acting in the sale on behalf of himself and his co-partners, C. & Co., the latter of whom were described as the vendors; and the contract was signed by J. "for self and partners:"—*Held*, that J. alone could not sue on the contract; but that C. & Co. should be co-plaintiffs. *Jung v. Phosphate of Lime Company*, 3 L. R.; C. P. 139; 37 L. J. 73; 17 L. T. 541.

Declaration on an agreement by the plaintiffs to sell and deliver to the defendant, and by the defendant to purchase, as many of the plaintiffs' gas coals, equal in quality to a cargo before shipped on trial, as one steam-vessel to be sent by the defendant could fetch in nine months from S. to L. Breach, that the defendant refused to send a steam-vessel to fetch divers cargoes of coals. A plea, that before breach the plaintiffs broke the contract by delivering coal which was not gas coal equal in quality to the cargo shipped on trial, and wholly unfit for the defendant's purposes, as the plaintiffs well knew. Another plea, that before breach, the plaintiffs broke the contract by detaining beyond the time permitted by the contract the vessel sent by the defendant to fetch the coal:—*Held*, neither of the pleas was an answer to the declaration. *Jonassohn v. Young*, 4 B. & S. 206; 32 L. J. Q. B. 384.

By an agreement between the plaintiffs, described as the solicitors of an intended company to be incorporated by act of Parliament, and the defendants as contractors, it was agreed that, provided the act was obtained, the defendants should carry out the works at a certain price, and that in the event of the act not being obtained, the defendants should pay a sum not exceeding 360*l.*, towards the expenses in endeavouring to obtain the act:—*Held*, that it was a condition precedent to the plaintiff's right to recover, that they should use every reasonable exertion to obtain the act; and that having stopped merely from want of funds, they had no claim on the defendants. *Leakep v. Lucas*, 14 C. B. N. S. 491; 32 L. J. C. P. 289; 11 W. R. 832—Ex. Ch.

[2] Under 19 Geo 2, c. 21, the offence of profanely cursing and swearing may consist of a volley of oaths uttered at one and the same time, and the penalty may be a cumulative one for each oath. *Reg. v.*

II. Relative to the Filing of the Conviction at the Sessions.[1]
III. ,, Construction of the Conviction.[2]

COPYHOLD, Estate of. 3 Abr. 223. *See* Bankrupt; Land Tax; Mortgage; Remainder; Reversion. As to Inclosures, *see* 30 & 31 Vic. c. 89.

I. Relative to the Creation and Grant of Copyholds, and Customary Rights, p. 132.
II. As to the Admission, p 133.
III. As to Extinguishment and Enfranchisement, p. 133.
IV. As to Payment of Fines, p. 133.
V. Relative to the Remedies the Lord and Tenant have to Protect their respective Rights, p. 134.

I. Relative to the Creation and Grant of Copyhold, and Customary Rights.[3]

Scott, 4 B & S. 360; 33 L. J. M. C. 15; 8 L. T. N. S. 662—Q. B.

A conviction in this form, "did profanely curse one profane curse, to wit (specifying the curse) twenty times repeated," and that the justices adjudged the offended to pay a cumulative penalty, is good. *Id.*

The certificate of a previous conviction was signed "T. H.," deputy-clerk of the peace for the said borough:—*Held*, sufficient by the 8 & 9 Vic., although there could not be a deputy-clerk of the peace of a borough, T. H. being de facto an officer of the court, and, as such, having the custody of the records. *Reg. v. Parsons*, 1 L. R. C. C. 24; 35 L. J. M. C. 167.

[1] It is the duty of justices summarily convicting to cause the conviction to be lodged with the clerk of the peace pursuant to sect. 14 of 11 & 12 Vic. c. 43, and on proof of neglect to do so, proceedings may be had against them; but the clerk to the justices being only their servant, a mandamus cannot be granted to compel him to lodge the convictions. *Hayward, ex parte*, 9 Jur. N. S. 820; 32 L. J. M. C. 89; 7 L. T. N. S. 622—Q. B.

The 5 Geo. 4, c. 83, s. 17, requires convictions before justices under the act to be filed in the court of quarter sessions, and makes a copy of such conviction, signed by the clerk of the peace, evidence of the same. The oath of the police, and the production of the minute-book of the clerk of the court, containing an entry of such conviction is insufficient. *Giles v. Siney*, 11 L. T. N. S. 310—Q. B.

[2] Under 24 & 25 Vic. c. 100, s. 42, a female charged a man with an assault, and on her examination deposed not only that he had assaulted her and hurt her knee, but that he had connexion with her, though "she did not consent, and did what she could to resist him." The evidence showed that the part of her statement which related to indecent assault was improbable, and the justices, disbelieving it, convicted him of an assault:—*Held*, that they had jurisdiction to do so, although the evidence, if believed, disclosed a felony. *Wilkinson v. Dutton*, 3 B. & S. 821.

But where a defendant was summoned, under the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, s. 81, for assaulting a constable in the execution of his duty, the magistrates dismissed the summons, but convicted him, under the 24th & 25 Vic. c. 100, for a common assault:—*Held*, that the conviction was bad, as being under a different statute from that under which the summons was issued. *Reg. v. Brickhall*, 10 Jur. N. S. 677; 33 L. J. M. C. 156; 10 L. T. N. S. 385.

[3] Grants of copyhold are ineffectual and void in law, when made by the lord to himself. *Christchurch, Oxford (Dean and Chapter) v. Buckingham (Duke)*, 17 C. B. N. S. 391.

W., tenant by copy of court roll for his life, took, according to the custom, a grant from the lord of the reversion to C. and D., his sons, for the term of their lives, in trust for W. "as sole purchaser:"—*Held*, that C. and D. were trustees of the reversion for W. *Keats v. Hewer*, 10 Jur. N. S. 1040; 11 L. T. N. S. 209—L. J. *See Christchurch Oxford (Dean and Chapter) v. Buckingham (Duke)*, 10 Jur. N. S. 749; 33 L. J. C. P. 322.

As to barring an equitable estate tail. *Gibbons v. Snape*, 32 Beav. 130; 33 L. J. C. 103. As to covenanting to produce Court rolls, 5 L. R. Eq. 115.

A custom in a manor that copyholders of inheritance may break the surface and dig and get clay, without stint, out of their copyhold tenements, for the purpose of

II. As to the Admission.[1]

III. As to Extinguishment and Enfranchisement.[2]

IV. Payment of Fines.[3]

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making bricks to be sold off the manor, is good in law. *Salisbury (Marquis) v. Gladstone*, 9 H. L. C. 692; 34 L. J. C. P. 222.

So is a custom for copyholders to carry away the entire soil of their copyhold tenements. *Hanmer v. Chance*, 11 Jur. N. S. 397; 34 L. J. C. 413; 12 L. T. N. S. 163—C.

A custom in a manor may be proved by one instance. *Id.*

The 2 & 3 Will. 4, c. 71, s. 1, applies only to profits a prendre in the land of another, and has no application to a copyholder's act on his copyhold tenement. *Id.*

That statute does not invalidate the natural effect of acts not thirty years old, as evidence in support of the existence of a custom. *Id.*

[1] It is no sufficient objection to the title of a vendor of an enfranchised copyhold, that a mortgagee to whom a surrender had been made had not been admitted before the enfranchisement, the deed of enfranchisement having conveyed to the vendor all the rights of the lord. *Minton v. Kirwood*, 1 L. R. Eq. 449; 12 Jur. N. S. 86; 35 L. J. Chanc. 393; 13 L. T. N. S. 751.

A surrender of copyholds was made to the use of three persons jointly. The three, acting conjointly, caused the surrender to be enrolled on the court rolls of the manor, gave notice to the tenants to pay rents to them, and received the rents; they afterwards caused the estate to be advertised for sale. Two of them then executed a deed of disclaimer, and the remaining one was afterwards admitted:—*Held*, that the disclaimer was inoperative, and that the lord was entitled to a fine as upon the admission of three tenants. *Bence v. Gilpin*, 37 L. J. Ex. 36.

The court will by mandamus to the lord of a manor, give effect to an order of the Court of Chancery, appointing a person to convey copyholds under sec. 20 of the Trustee Act, 1850. *Lane, in re*, 12 W. R. 710—Q. B.

Where such an order has been made, the court will not look beyond it, but give effect to it according to its terms. *Id.*

A testator directed his executors to sell his copyhold property, "and to convey and assure such copyhold hereditaments unto the purchaser thereof:"—*Held*, that the effect of the devise was to confer upon the executors no estate, but simply a power to sell; and that therefore a purchaser was entitled to admission on the roll as tenant, without a previous admission of the executors or heir of the testator. *Reg. v. Wilson*, 3 B. & S. 201; 9 Jur. N. S. 430; 32 L. J. Q. B. 9.

[2] Reservations in favour of copyhold tenants strangers to the grants are extinguished by enfranchisement. *Brabant v. Wilson*, 35 L. J. Q. B. 49.

The lord of a manor, with consent of the homage, granted a portion of the waste to be held by the grantee as a copyhold estate, upon condition that no building should thereafter be erected thereon, and reserving to certain copyholders in the grant, liberty, in case of the erection of any building contrary to the condition, to enter and pull down and remove the same. The estate afterwards vested in B., who was admitted tenant, and gave notice, under the provisions of 4 & 5 Vic. c. 35, s. 40; 15 & 16 Vic. c. 51, s. 8; and 21 & 22 Vic. c. 94, s. 10; of his desire to enfranchise the same:—*Held*, that the effect of the enfranchisement was to give B. an estate in fee-simple, disencumbered of the condition, and that the lord was entitled to compensation accordingly. *Brabant v. Wilson*, 1 L. R. Q. B. 44; 12 Jur. N. S. 24; 35 L. J. Q. B. 49; 6 B. S. 974.

The lord of a manor is entitled, on the enfranchisement of a customary freehold, to compensation in respect of the advantages accruing to the customary freeholder from the removal of restrictions on leasing or other disabilities attending his customary estate. The amount of the compensation is a question of fact for the valuer, and depends upon the extent to which the value of the property is increased by the removal of such restrictions. *Lingwood v. Gyde*, 2 L. R. C. P. 72; 16 L. T. N. S. 229.

A., being the owner in fee of certain lands, and also of copyhold lands adjoining, sold and surrendered the copyhold lands to B., and by a deed of even date B., by covenant, purported to exempt A. his heirs, &c., from all liability in respect of any damage arising at any time to B. his heirs, &c., from the working of mines, &c., by A. This deed was not entered on the court-rol's. B. enfranchised the copyholds, and conveyed them to persons under whom plaintiff claims, such persons having no notice of the deed. In an action for damage against the owner of the freeholds, caused by the sinking of the soil and injury to buildings from mining by defendant:—*Held*, that the deed was no defence to the action. *Richards v. Harper*, 1 L. R. Ex. 199; 35 L. J. 130; 4 H. & C. 55.

[3] Where a person entitled to copyhold tenements in fee, who had never been admitted and never sought admission to them, died, having devised all his property to his eldest son and heir,—*Held*, that on the admission of the son the lord was entitled to two fines, one for the tenant's own admission, and the other as if his father had been admitted. *Londesborough (Lord) v. Foster*, 3 B. & S. 805; 32 L. J. Q. B. 225, 8 L. T. 240; and that he was not estopped from

V. Relative to the Remedies the Lord and Tenant have to Protect their respective Rights.[1]

COPYRIGHT. 3 Ab. 215 Stats. 5 & 6 Vic. 45; 10 *id.* c. 95. Of designs, 13 & 14 Vic. 104; 21 *id.* c. 70; 24 & 25 *id.* c. 73. Fine Arts, 25 & 26 Vic. s 68. International, 7 *id.* c. 12.

I. In Books.

(A) *What Works are Subject-matter of Copyright*, p. 134.

(B) *Assignment of Copyright*, p. 135.

(C) *Of the Registration of Copyright*, p. 135.

(D) *Remedy in case of Infringement*, p. 135.

II. In Photographs and Engravings, p. 251.

III. In Designs, p. 252.

IV. International Copyright, p. 255.

I. In Books.

(A) *What Works are Subject-matter of Copyright.*[2]

claiming this on the ground that the property was held in trust, and that he had admitted some of the *cestuis que* trusts on payment of the accustomed fines. *Id. See Bence v. Gilpin*, 37 L. J. Ex. 36.

[1] A mortgagee of copyhold premises, who has not been admitted, cannot maintain ejectment against the tenant of the mortgagor, unless the relation of landlord and tenant shall have been established aliunde. *Rayson v. Adcock*, 9 Jur. N. S. 800; 7 L. T. N. S. 747, C. P.

A tenant encroached on an adjoining waste, part of a manor belonging to her son, a minor. On his attaining his majority, the homage presented that she had encroached. She thereupon applied for and obtained from her son, the lord, a grant of the piece of land so encroached on. She never paid any rent for it, nor was any service ever rendered in respect of the grant:—*Held*, that the ordinary presumption of law that an encroachment made by a tenant is for the benefit of his landlord, was rebutted; that by the acceptance of the grant from the lord the encroacher became his tenant, and he was entitled to recover. *Berney v. Bickmore*, 8 L. T. N. S. 353, Q. B.

[2] The protection given by common and statute law which is called copyright is only in respect of some already published or some composed and not yet published literary production, and therefore there can be no copyright in the prospective series of a newspaper. Copyright may attach upon each successive publication; but that which has no present existence as a publication cannot be the subject of property. *Platt v. Walter*, 17 L. T. 157; nor can a person acquire a property in the name of a proposed publication. The word "author" used in the 5 s. 5 & 6 Vic. c. 45, is equally applicable to foreigners as to British subjects, and gives protection to who first publishes here. *Routledge v. Low*, 37 L. J. Ch. 454. *Low v. Ward*, id. 841. *Maxwell v. Hogg*, 2 L. J. L. R. 2 Ch. Ap. 307, C.

There is copyright in a catalogue unless it is a mere dry list of names. *Hotten v. Arthur*, 1 H. & N. 603; 32 L. J. 6771; so in a directory or guide-book. *Kelly v. Morris*, 1 L. R. Eq. 6, Ch. 36, L. J. 14. It is no defence to say that the pirated work is not offered for sale itself, but merely used to promote the sale of the books mentioned in it. *Id.*

By the effect of section 18 of the 5 & 6 Vic. c. 45, the proprietor of a periodical is precluded from republishing without the consent of the author articles written by the latter for and published in such periodical in any other form than as reprints of the entire numbers of the periodical in which those articles appeared. *Smith v. Johnson*, 33 L. J. Ch. 137; 9 Jur. 1223, 9 L. T. 437.

A republication in supplemental numbers of a selection of various tales previously published in a periodical is a separate publication within the section. *Id.* 4 Giff. 632.

An agreement between a publisher and proprietor of a magazine with a purchaser of it, not to publish, carry on, or conduct any periodical of a like nature, is not of so general a restraint of trade as to render it illegal. *Ainsworth v. Bentley*, 14 W. R. 630.

An alien author residing in a British colony, while publishing in England a work

(B) *Assignment of Copyright.*[1]

(C) *Of the Registration of Copyright.*[2]

(D) *Remedy in case of Infringement.*[3]

II. In Photographs and Engravings.[4]

for the first time, acquires a copyright in England in that work. *Low v. Routledge*, 1 L. R. Ch. 42; 35 L. J. 10 Ch. *Boucicault v. Delafield*, 33 L. J. C. 38, 1 H. & M. 597.

[1] An assignment of copyright made after the 54 Geo. 3, c. 156, and before the 5 & 6 Vic. c. 45, needs not be attested. *Cumberland v. Copeland*, 1 H. & C. 194; 9 Jur. N. S. 253, Ex. Ch. 54 Geo. 3, c. 156, repealed by s. 4, the 8 Ann. c. 19, s. 1, in this particular. (*Id.*)—*Semble*, where an assignment of copyright is made by an entry on the register, both the name and place of abode of the assignee should be stated; but quære, whether there may not be a good assignment by deed without complying with these requirements. *Wood v. Boosey*, 2 L. R. Q. B. 340; 36 L. J. 103.

[2] The registration of the title of a book or periodical prior to publication has no legal effect. It is questionable whether the title of the book or periodical forms a part of the copyright, or is a mere matter of trade-mark. *The Correspondent Newspaper Company v. Saunders*, 11 Jur. N. S. 540; 12 L. T. 540.

Equity will afford no relief against an alleged piracy of the title of a magazine where the proprietor has made a false registration as to the date of its publication. *Maxwell v. Hogg*, 12 Jur. N. S. 916; 15 L. T. N. S. 204.

The assignee of an opera was described in an entry in the registry book as "G. W." without any other description:—*Semble*, that this entry, though defective, would not prevent the assignee from maintaining an action if the original entry of proprietorship was good. *Wood v. Boosey*, 36 L. J. Q. B. 103; 37 id. 84; 3 L. R. Q. B. 223.

In registering a musical composition under the two statutes, the time of first publication was given merely as "1850."—*Held*, insufficient, the day of the month ought to have been stated. *Id.*

A proprietor of a design furnishing to the Registrar of Designs a portion of the fabric on which it is impressed, without any written description, is sufficient. *Holdsworth v. McCrea*, 2 L. R. H. L. 380; 36 L. J. Q. B. 297. *See* 18 L. T. 710.

A painting, engraving, or photograph, will in general be sufficiently described on the register of proprietors by the name, as in this case, "Painting in oil, &c.," "Ordered on foreign service," "My first sermon," but in some cases it would be advisable to add a sketch or outline of the work. *Ex parte Beal*, 3 L. R. Q. B. 387; 37 L. J. 161.

Where the composer of an opera arranges the opera for any particular instrument, such arrangement is a separate and distinct work from the opera, and to acquire a copyright in such an arrangement it must be entered on the register. *Wood v. Boosey*, 37 *id.* Q. B. 84; 36 L. J. 103.

Copying a print by photography is within the Engraving Act, 17 Geo. 3, c. 97, and the registered owner of the print may maintain an action for publishing the photograph. *Graves v. Ashford*, 36 L. J. C. P. 139.

[3] Perpetual injunction against the proprietor of a street directory. To obtain this and save such a work from the charge of piracy it must be compiled by the legitimate application of independent personal labour. *Kelly v. Morris*, 1 L. R. Eq. 697.

It is no infringment of copyright to represent a play dramatised from a novel written by another author; but it is an infringement to print and publish a play so constructed. *Tinsley v. Lacy*, 1 H. & M. 747.

An action for infringement is not answered by a plea in confession and avoidance that the book of the plaintiff and the books of the defendant were composed by one and the same author, from common sources of information. *Rooney v. Kelly*, 14 Ir. Com. Law. Rep. 151, Q. B.

Where a person obtains information of the nature afforded by statistical tables, directories, road-books, &c., and publishes the same, another person has no right to transfer into his work a considerable portion of the information so published, although it may form but a small part of such work. *Scott v. Stamford*, 36 L. J. Ch. 729; 3 L. R. Eq. 718; 16 L. T. N. S. 51; 15 W. R. 757.

To sell photographed copies of engravings from pictures is equivalent to selling copies of the picture according to sec. 6 of 25 & 26 Vic. c. 68. Though a number of copies are sold together, the sale of each copy is a separate offence. *Ex parte Beal*, 37 L. J. Q. B. 161; 3 L. R. Q. B. 387. A penalty with costs inflicted by summary proceedings under 25 & 26 Vic. c. 6, is a debt provable in bankruptcy. 15 L. T. 163; but not discharged by deed of arrangement. 19 L. T. 241; 3 L. R. Ch. 642.

[4] Copying a print by the process of photography is within the 17 Geo. 3, c. 57, and the proprietor of such print, who has a copyright therein by 8 Geo. 2, c. 13, and 7 Geo. 3, c. 38, can maintain an action, under 17 Geo. 3, c. 57, against any one who publishes such photographic copy contrary to that statute. *Greaves v. Ashford*, 36 L. J. C. P. 139; 2 L. R. C. P. 410; 16 L. T. N. S. 98, Ex. Ch. *Gambart v. Ball*, 14 C. B. N. S. 306; 9 Jur. N. S. 1059. 32 L. J. C. P. 166; 8 L. T. N. S. 426. See *Ex parte Beal*, 37 L. J. Q. B. 161; 18 L. T. 285.

It is a sufficient compliance with the 8 Geo. 2, c. 13, as to printing the name of the proprietor on each print, for the name of the proprietor to be on the publication line of the print, without an express statement there that he is such proprietor. (*Id.*)

III. In Designs.[1]

IV. International Copyright.[2]

CORONER. *See* 3 Abr. 255; Mandamus.

I. Privileges and Authority of Coroner.[3]

(A) *To summon and swear the jury.*[4]

S., the proprietor of a periodical called "Good Words," agreed verbally with G. to purchase the right to engrave certain photographs to illustrate a series of articles in "Good Words." S. afterwards commenced publishing in a separate form these articles, illustrated by engravings from the same photographs:—*Held*, that the verbal agreement extended to the use of the photographs in "Goods Words" only; and that S. had no equity, inasmuch as by 25 & 26 Vic. c. 68, s. 3, every leave or license for the publication of photographs must be in writing. *Strahan v. Graham*, 16 L. T. N. S. 87; 15 W. R. 487.

[1] The same nicety is not required in registering patterns or designs as in describing inventions sought to be protected under the Patent Laws. *Holdsworth v. M'Crea*, 2 L. R. H. L. 380; 36 L. J. Q. B. 297, H. L.

Where a person registers a portion of the woven fabric on which his design is applied, but does not furnish the registrar with any description in writing of it, although such registration is a good and valid registration within the act, yet it only gives him a copyright in the design as an entirety and not as to its parts. *M'Crea v. Holdsworth*, 36 L. J. Q. B. 2917; 1 L. R. Q. B. 264; 33 L. J. Q. B. 329; Ex. Ch. 35 *id.* 123.

The copyright of a registered design is lost if the proprietor (English or foreign) sell the registered article abroad without the letters "R^d^" being attached thereto, as required by the 5 & 6 Vic. c. 100, s. 4. *Sarazin v. Hamel*, 32 Beav. 151; 32 L. J. C. 380; 7 L. T. 660.

The union of an old design with a new design is not within the statute; and injunction to restrain the manufacture and sale of such a combination was refused. *Mullooney v Stevens*, 19 L. T. N. S. 190.

The 5 & 6 Vic. c. 100, applies to new designs for the ornamentation of articles, the 6 & 7 Vic. c. 74, to new designs of articles of utility. *Windover v. Smith*, 32 Beav. 200; 32 L. J. 561.

[2] The 19th section of the 7 & 8 Vic. c. 12, applies to British subjects first publishing in a country with which no international convention exists. *Boucicault v. Delafield*, 1 H. & M. 597; 9 L. T. N. S. 709; 9 Jur. N. S. 1282; 33 L. J. C. 28.

A British subject first produced for representation a dramatic piece or entertainment at New York, in America. He subsequently produced it in London:—*Held*, that there being no international treaty or arrangement (which was alluded to by 7 & 8 Vic. c. 12, s. 14), he had not obtained the copyright in such piece in England. (*Id.*)

Under section 6 of the International Copyright Act, 7 Vic. c. 12 (an act incorporating the provisions of the English Copyright Act, 5 & 6 Vic. c. 45), the pianoforte score of an opera was registered as follows:—"Title of work, 'The Merry Wives of Windsor,' opera composed by N., pianoforte score; name and abode of author or composer, N., Berlin." It was proved that although N. was author of the opera, the pianoforte score was composed by B.:—*Held*, that the registration was defective, and that the plaintiff had therefore failed to make out his title, as the pianoforte score was a production requiring independent knowledge and skill on the part of the composer, whose name ought to have been entered in the register-book. *Wood v. Boosey*, 36 L. J. Q. B. 103; 37 id. 84; 3 L. R. 223.

[3] A coroner has no jurisdiction to hold an inquest on a fire or otherwise than on a dead body, and that *super visum corporis*, and a prohibition will issue against his holding any other inquest. *Reg. v. Herford*, Q. B.; 3 Ell. & Ell. 115.

A coroner, holding an inquest on a dead body, is not liable to an action for words falsely and maliciously spoken by him in his address to the jury. *Thomas v. Churton*, 2 B. & S. 475.

When a coroner has held an inquest *super visum corporis*, and a verdict has been returned and recorded, he is *functus officio*, and he cannot hold a second inquest in the same case unless the first has been quashed, and a *melius inquirendum* awarded. *Reg. v. White*, Q. B.; 3 Ell. & Ell. 137. Removal under 23 & 24 Vic. c. 116. *Re Ward*, De G. F. & J. 700.

[4] It is not necessary that the jurors should be sworn *super visum corporis*, or that they should all be sworn at one time, or that they should all view the body at the same time. *Reg. v. Yorkshire* (*Coroner*), 9 Cox, C. C. 373.

The court refused to quash an inquisition on the ground that evidence was received not upon oath, there being no *mala praxis*, and no mischief having resulted, and the jury having found their verdict upon the other evidence only. *Reg. v. Staffordshire* (*Coroner*), 10 L. T. N. S. 650.

(B) *To view the Body.*[1]

(C) *Depositions of Witness.*[2]

(D) *To adjourn the Inquest.*[3]

(E) *As to the Form of the Inquisition.*[4]

CORPORATIONS. 3 Abr. 253. *See post*, p. 138.

I. Contracts.[5]

II. Liability of, for Torts.[6]

When a coroner's jury cannot agree on an inquest to inquire into the death of a person, the coroner cannot discharge them, but they must be remitted to the judges of the next assizes for the county. *Reg. v Reinheatz*, 4 F. & F. 1094.

[1] After a coroner's juror had viewed the body and heard part of the evidence, another person was sworn, viewed the body, and took part in the proceedings on hearing that portion of the evidence which had been previously taken read over to him:—*Held*, that this was a sufficient ground for bringing up the inquisition to be quashed. *Reg. v. Yorkshire (Coroner)*, 9 L. T. N. S. 424, B. C.

[2] Depositions taken before the coroner of a witness too ill to attend may be sent before the grand jury. *Reg. v. Mooney*, 9 Cox, C. C. 411.

So depositions of a prisoner at a coroner's inquisition, after a caution by the coroner, may be read. *Reg. v. Colmer*, 9 Cox, C.C. 506.

[3] If a coroner's inquest is adjourned, and on the day appointed the court is not formally opened and further adjourned, the proceedings drop, and the court is dissolved, and everything else done in the matter of the inquest is *coram non judice*. *Reg. v. Payne*, 34 L. J. Q. B. 59; 11 L. T. N. S. 707, B. C.

[4] To render the proceedings on inquisitions *super visum corporis* regular, the continuity of the proceedings, from the commencement to the signing of the inquisition, must be complete; therefore where, although the verdict was given, but an adjournment took place to a particular day to allow of the verdict being drawn up in form, the coroner did not attend on the day named, but gave notice of a further adjournment, at which time the inquisition was signed. The inquisition was quashed, as *coram non judice*. *Reg. v. Coroner of Dover*, 10 Jur. N. S. 1150; 11 L. T. N. S. 488.

A coroner's inquisition is an indictment, within the meaning of sec. 6 of the 24 & 25 Vic. c. 100, and it is therefore unnecessary to set forth therein the manner in which, or the means by which, the death of the deceased was caused. *Reg. v. Ingham*, 5 H. & S. 257; 9 Cox C. C. 508; 10 Jur. N. S. 968; 33 L. J. Q. B. 183.

An omission in a coroner's inquisition to state the time at which the offence was committed (when time is not of the essence of the offence), is cured by sec. 2 of the 6 & 7 Vic. c. 83. *Id.*

[5] A corporation will be liable on a contract, though not under seal, where the goods have actually been supplied to and accepted by the corporation, and are such as must of necessity be from time to time supplied to the corporation for the purposes for which it was incorporated. *Nicholson v. Bradford Union*, 1 L. R. Q. B. 620; 35 L. J. 176; 12 Jur. 686; 16 L. J. 830. See *Clark v. Guardians Cuckfield Union*, 21 *id.* 349. *South of Ireland Colliery Company v. Waddle*, 37 L. J. C. P. 211.

Where the directors of a company were empowered to make contracts under the common seal, and three were a quorum:—*Held*, that three directors could exercise their power only if assembled together as a board, and that a deed sealed with the consent of three directors, given singly at different times, was not the deed of the company. *D'Arcy v. Tamar, Kit-hill C. R. C.* 14 W. R. 968, Ex.

As to contracts *ultra vires*. *See Tayler v. Chichester* R. W. C. 2 L. R. Ex. 356; 36 L. J. Ex. 201. They may sue on an implied covenant. 38 L. & Ex. 93.

A company incorporated by statute is entitled to make all contracts connected with the purposes of its incorporation not expressly or by necessary implication prohibited. All such contracts are *primâ facie* valid; and it lies upon the company seeking to repudiate a contract to show that it is prohibited, not upon the opposite party to show that it is authorised. *Id.*

[6] The principle on which a private person or a company is liable for damage occasioned by the neglect of servants, applies to a corporation which has been intrusted by statute to perform certain works, and to receive tolls for the use of those works, although the tolls are devoted to the maintenance of the works, and, in case of any surplus existing, the tolls themselves are to be proportionably diminished. *Mersey Docks and Harbour Board Trustees v. Gibbs—Mersey Docks and Harbour Board Trustees v. Penhallow*, 1 L. R. H. L. 93; 14 L. T. N. S. 677, H. L.

With respect to questions of scienter, there is no difference between a corporation and an individual; and whatever is notice to a person competent to receive it is notice to the corporation. *Stiles v. Cardiff Steam Navigation Company*, 10 Jur. N. S. 1199; 10 L. T. N. S. 844, Q. B. *Western Bank of Scotland v. Adie*, 1 L. R. H. L.

III. Proceedings by and against.[1]

CORPORATIONS, Municipal.

3 Ab. 267. *See* 5 & 6 Wm. 4, c. 76, amended by 24 & 25 Vic. c. 74.

I. Relative to the Creation and Suspension of, p. 138.
II. „ Officers connected with, p. 138.
III. „ Rights and Liabilities of, p. 139.
IV. Bye-laws of, p. 139.
V. Relative to Remedies connected with, p. 140.

I. Relative to the Creation and Suspension of.[2]

II. „ Officers connected with.[3]

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145. *See Yarborough v. Bank of England*, 16 East, 6.

Even where malice is the foundation of the action, a corporation aggregate may be subject to it. *Whitfield v. The South-Eastern Railway Co.* 1 E. & E. 121; 27 L. J. Q. B. 229.

So a corporation may become responsible for an assault and false imprisonment committed by its officers or servants in the course of their duty; as, where the servants of a railway company wrongfully eject a passenger from the carriages, or give him into custody under the mistaken notion that he had infringed a bye-law. *Eastern Counties Railway Company v. Broom*, 6 Ex. 314. *Goff v. Great Northern Railway Company*, 3 El. & El. 672. *Giles v. Taff Vale Railway Company*, 2 E. & B. 831.

As to refusing to grant license to dredge. *See Mills v. Corporation of Colchester*, 17 C. B. 65. *See infra.*

[1] A member of a corporation cannot institute a suit against the governing body of the corporation, unless there is also an infringement of a personal or a proprietory right, or an injury to him as an individual. It must be by the corporation itself, or by information by the attorney-general, if it is for an injury to the public. *McCormac v. Queen's University*, 15 W. R. 733, Ir. R.

The loss of a monopoly of university degrees is not a personal injury. *Id.*

A local gas act for the city of H. provided that if any person carelessly or accidentally injured any lamp set up or belonging to the company, or by any person or persons at his, her, or their private expense, and shall not make satisfaction for the damage, the same shall be recoverable summarily before justices:—*Held*, that the corporation of H. was a "person or persons" within the meaning of this section. *Mayor, &c., of Hereford v. Morton*, C. P. 15 L. T. 187. *Cowley v. The Corporation of Sunderland*, 30 L. J. Ex. 127.

Costs will not be disallowed that have been incurred with the *bonâ fide* view of protecting the corporate rights though unsuccessfully. *R. v. Mayor of Tamworth*, 3, L. J. N. 258.

[2] The power of the Crown to grant a charter of incorporation under 1 Vic. c. 78, s. 49, attaches on the presentation of a petition under the act, and whatever happens afterwards only affects its discretion. *Reg. v. Aberavon* (*Mayor, &c.*), 11 L. T. N. S. 417—Q. B.

Such a petition must be a petition representing the wishes of the majority of the inhabitant householders, and this is a question of fact for the jury. *Id.*

It seems that inhabitant householders in this section includes compound householders (under 13 & 14 Vic. c. 99) as well as ratepayers. *Id.*

The court will not grant a *quo warranto* against an individual to try the legality of a charter of municipal incorporation. *Reg. v. Jones*, 8 L. T. N. S. 503—Q. B. Nor inquire into the validity of a charter, but will act upon it as being valid until proper proceedings are taken to set it aside. *Attorney-General v. Avon* (*Portreeve, Aldermen, and Burgesses*), 9 Jur. N. S. 1117; 8 L. T. N. S. 594.

A charter of incorporation granted under 7 Wm. 4 & 1 Vic. c. 78, to a borough previously possessing a body corporate, but not named in the schedules to 5 & 6 Wm. 4, c. 76, confers upon it the same powers and privileges as if it had been so named. *Id.*

During the abeyance of an ancient corporation an Act was passed placing the justices of the peace *ad interim* in the place of the suspended corporation, and imposing on them *the obligation* "to grant licenses to such oyster-dredger men as should apply for the same, *under the usual and accustomed payments of fees;*" and it was enacted that when the borough should be reincorporated "the powers and authorities of the justices should cease and thenceforth remain in such corporation." The corporation was subsequently revived:—*Held*, that it was so with all its original rights, powers, and privileges, but that the duty imposed on the justices to grant licenses was not imposed on the corporation by force of the statute. *Mills v. The Mayor, &c., of Colchester*, 17 C. B. N. S. 635.

[3] As to making and subscribing declara-

III. Relative to the Rights and Liabilities of.[1]

IV. Bye-laws of.[2]

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tions qualifying for corporate offices. See 29 & 30 Vic. c. 22, s. 1.

A mayor of a borough not divided into wards, who, with the two assessors, presides at, and declares the result of, an election of town councillors for the borough, under 5 & 6 Wm. 4, c. 76, ss. 32–35, is precluded from being a candidate for election as town councillor, inasmuch as, acting as returning officer, he cannot return himself. *Reg. v. Owens*, 2 El. & El. 86. *Reg. v. White*, 2 L. R. Q. B. 557; 36 L. J. Q. B. 267; 16 L. T. N. S. 828.

Where the mayor is one of the councillors who go out of office on the 1st November, he causes a vacancy in the number of councillors, though, as mayor, he continues a member of the council till the 9th November. *Id.*

The power of removal of the clerk of the peace of a borough for misbehaviour is vested, by the 103rd and 105th sections of the 5 & 6 Wm. 4, c. 76, in the recorder, and not in the town council. *Reg. v. Haward*, 2 B. & S. 585; 9 Jur. N. S. 45.

An attorney, in conjunction with his partner, occupied a house within the limits of a borough for which he was elected town councillor, such occupation being for the purposes of business only, he residing out of the borough:—*Held*, that this was a sufficient qualification for the office, under sect. 9 of 5 & 6 Wm. 4, c. 76. *Creeke, In re*, 32 L. J. Q. B. 89; 7 L. T. N. S. 596; 3 B. & S. 559.

A mayor of a borough (who is a justice of the peace by virtue of his office, under the 57th sect. of the 5 & 6 Wm. 4, c. 76), is not it seems a justice of the quorum. Per Cockburn, C. J. Semble, by Blackburn, J., that he is. *Reg. v. Llangian*, 32 L. J. M. C. 225; 8 L. T. N. S. 422—Q. B.

On a rule for a *quo warranto* against a town councillor, as not being a resident householder, it not appearing that he had taken the house, or that he paid the rent, though a joint occupant, the rule was made absolute. *Reg. v. Maxwell*, 11 W. R. 308—Q. B. *Reg. v. Blizard*, 36 L. J. Q. B. 18; 15 L. T. N. S. 242.

The words "any person entitled to vote" in the Act of 1852 require that at the election of councillors that the persons nominating should be on the list of voters. *Reg. v. Parkinson*, 37 L. J. Q. B. 52. It suffices if the voting paper contains a contraction of a Christian name which is well known, and in ordinary use as representing that name, and that in such a case the name need not be written in full; and that, therefore, the contractions "Wm." and "Willm." may be used in a voting paper as equivalent to "William." *Reg. v. Bradley*, 3 El. & El. 634.

Where a borough is divided into wards, a person nominating a candidate for a town councillor of a particular ward, must himself be a voter of *that* ward. *Reg. v. Parkinson*, 3 L. R., 3 Q. B. 11; 37 L J. 52.

By 5 & 6 Wm. IV. c. 76, s. 44, a burgess rated in respect of distinct premises in two or more wards shall be entitled to be enrolled and vote in such one of the wards as he shall select, but not in more than one. A burgess rated in two wards and enrolled in both, but who only voted in one, was held good, as the objection was only ground for a revision of the roll. *Reg. v. Tugwell*, 3 L. J. N. C. 176.

The 5 & 6 Wm. IV., c. 76, s. 57, does not confer on the mayor the right to preside and act as chairman of Petty Sessions and other meetings of the Borough justices. *Ex parte the Mayor of Birmingham*, 30 L. J. Q. B. 2; 3 E. & E. 222.

A person convicted of bribery and fined 40*s.* in a County Court for the offence under 22 & 23 Vic. 35, is not disqualified for six years from serving a municipal office. *In re Wray*, 12 L. J. 270.

By 30 & 31 Vic. c. 75, judicial or corporate officers may wear their official robes or orders at church.

A *quo warranto* refused to remove a person from being a town councillor, who had been elected in August, 1867, and had been *de facto* on the list of burgesses since the previous November. *Ex parte Hindmarch*, 3 L. R. Q. B. 12; 17 L. T. 174.

[1] Burgesses created by 5 & 6 Wm. IV., c. 76, are not entitled to participate in the common lands and stock held and applied before the act for the particular benefit of the burgesses of the borough. *Hulls v. Estcourt*, 32 L. J. Ex. 193; 8 L. T. N. S. 539; 2 H. & C. 47.

The occupier of a borough, whose father has received parochial relief, is entitled to be enrolled on the burgess list and elected councillor of the borough, as he cannot be said to have received parochial relief or other alms within the meaning of the Municipal Corporation Act, 5 & 6 Wm. IV., c. 76, s. 9. *Reg. v. Ireland*, 37 L. J. Q. B. 73.

A municipal borough in the absence of a non-intermittent clause is liable to be assessed to the county rate under 15 & 16 Vic. c. 81. *Were v. Clerk of Peace of Devon*, Resp., 34 L. J. M. C. 47, 11 L. T. 626.

[2] A bye-law of a corporation was, that no person who has been a bankrupt or insolvent shall hereafter be admitted a member of the court unless it be proved to the satisfaction of the court that such person, after the bankruptcy or insolvency, has paid his creditors the whole of their debts, or shall have established a fair and honourable character for seven years subsequent to such his bankruptcy or insolvency, to the satis-

V. Relative to Remedies connected with.[1]

CORPORAL Punishment. As to Juvenile Offenders, 25 & 26 Vic. c. 28; for Personal Violence, 26 & 27 id. c. 44.

COSTS. 3 Abr. 287. In action on Judgments, *see* Judgment; as to Paupers, *see* Forma Pauperis.

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XII. Issuing Execution where Action not Exceeding 20*l.*

I. Certificate for Costs in Actions of Tort where less than 5*l.* is Recovered, and of the Court reviewing the Judge's decision.[2]

faction of the court; on a mandamus to the company to restore a party to the office of assistant:—*Held*, that the insolvency must be notorious, and such as would be the consequence of a public stoppage in business, or of a trader calling his creditors together, or of entering into a deed of composition, and that so construed the bye-law was good. *Reg. v. Sadlers' Company*, 9 Jur. N. S. 1081; 32 L. J. Q. B. 337. After election, but before admission, the person elected was asked by the clerk of the company whether he was solvent, to which he answered that he was as solvent as any member of the court, and could pay 20*s.* in the pound. This representation was false, and was afterwards made the ground of a resolution of the court, passed without notice to him, to remove him from office:—*Held*, that the false representation was not one which affected his eligibility, and consequently that having been duly elected and admitted to the office, his removal without being heard in his defence was erroneous. *Reg. v. Sadlers' Company*, 10 H. L. C. 404.

[1] A *quo warranto* alleged that the defendant, within the town of B., in the county of M., exercised, without legal warrant, the office of mayor; and, together with O. R. and J. J., the powers and privileges of a body corporate, by the name and description of the mayor and bailiffs of the borough of B. The defendant suffered judgment by default:—*Held*, that the relator was entitled to costs under 9 Ann. c. 20, s. 5. *Lloyd v. Reg.* (in error), 2 B. & S. 656.

A person inducing another to personate a voter at a municipal election may be convicted, under sect. 9 of the 22 Vic. c. 35, although the vote was rejected. *Reg. v. Hague*, 4 B. & S. 715; 9 Cox. C. C. 412; 10 Jur. N. S. 359; 33 L. J. M. C. 81; 12 W. R. 110; 9 L. T. N. S. 648.

The conviction needs not set out the facts upon which it proceeded. *Id.*

A municipal corporation is not liable for the costs of an attorney conducting on their behalf an opposition to a bill in Parliament affecting their privileges, unless the retainer is under the common seal. *Sutton v. Spectaclemakers' Company*, 12 W. R. 742; 10 L. T. N. S. 411—Q. B. *See Lewis v. The Mayor of Rochester*, 30 L. J. C. P. 169; 6 C. B. 401.

Where an application is made to admit a burgess on the roll, if the mayor does not show cause, a burgess may. *Reg. v. Mayor of Exeter*, 3 L. J. N. C. 258.

[2] Where the plaintiff recovers less than 40*s.* in an action for slander for words (other than words actionable only by reason of *special damage*), no certificate can be given. (21 Jac. 1, c. 16.) In other actions for torts, if the damages are less than 40*s.*, the plain-

II. Certificate in actions of Contract where less than 40*s.* are Recovered.[1]

III. Of the effect of the County Courts Acts on the Partie's Right to Costs of Suit.[2]

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tiff would require a certificate not only under sec. 5 of the recent act, but under 3 & 4 Vic. c. 24, that the action was brought to try a right—the 23 & 24 Vic. c. 126, is, in effect, neutralised by sec. 5 of 30 & 31 Vic.

Although the court is not bound by the exercise of discretion by the judge who tries the cause, in refusing to certify for costs where the verdict is under the limit, yet it will not upon light grounds interfere. *Courtenay v. Wagstaff*, 16 C. B., N. S. 110; 12 W. R. 431; 9 L. T. N. S. 689.

An action of slander, after issue joined and before trial, was by agreement referred, "the costs of the cause to abide the event of the award." The arbitrator found one issue for the plaintiff, with twenty shillings damages:—*Held*, that he was entitled to the costs of the cause. *Frean v. Sargent*, 32 L. J. Ex. 281, 2 H. & C. 293, 8 L. T. N. S. 467; *see Evans v. Rees*, 30 L. J. C. P. 16.

Where a judge acts within his jurisdiction as to costs, though he be wrong, a prohibition cannot be sustained. *Farrow v. Hague*, 10 Jur. N. S. 638. 10 L. T. N. S. 534, Ex.

A plaintiff who sues in detinue in a superior court, when he might have sued in the London sheriff's court, and recovers by verdict less than 20*l.*, is to be entitled to his costs, if the judge "shall forthwith certify that it appeared to him that there was a sufficient reason for bringing the action in a superior court." At the trial on 3rd of February, of such an action, the plaintiff had a verdict for 10*l.*, and thereupon applied to the judge for a certificate for costs. He took time to consider the application, the defendant raising no objection. On 15th February it was granted:—*Held*, that defendant was precluded from objecting that the certificate was not granted forthwith. *Heden v. Atlantic Steam Navigation Company*, 2 El. & El. 671. *See Forsdike v. Stone*, 3 L. R. C. P. 607; 37 L. J. C. P. 301.

Where under statute a plaintiff had a right (to costs) but by a subsequent statute he had only a right conditional on the judge making an order; and proceedings were commenced and might have been completed during the continuance of the latter statute, but that statute was repealed before the necessary order was obtained from the judge:—*Held*, that the judge or court had no power now to make the order, and that plaintiff was not entitled to his costs by the revival of the earlier statute. *Butcher v. Henderson*, 3 L. R. Q. B. 335, 37 L. J. 133. *Sed Vide Restall v. London and South Western Railway Company*, 3 L. R. Ex. 141, 37 L. J. 89.

Upon a motion for costs, under the 15 & 16 Vic. c. 54, s. 4, after an unsuccessful application to a judge at chambers, the plaintiff must bring before the court all relevant materials which were used before the judge. *Bennett v. Benham*, 15 C. B. N. S. 616, 33 L. J. C. P. 153, 12 W. R. 313; 9 L. T. N. S. 652; he cannot make an independent application to the court for costs, but should come by way of appeal. *Pryce v. Griffiths*, 9 L. T. N. S. 418.

[1] The court has no power, under the 43 Eliz. c. 6, s. 2, to deprive a plaintiff of his costs, on his accepting payment into court of a sum under 40*s.*, and giving up the rest of his claim. Nor where, upon a reference to the master, the award is for a sum under 40*s.* *Waylett v. Wyndham*, 2 H. & C. 982, 33 L. J. Exch. 172, 9 L. T. N. S. 725, 7 L. T. 139; *Dimsdale v. London, Brighton and South Coast Railway Company*, 11 W. R. 729, 8 L. T. N. S. 453.

Where a defendant pays money into court, which the plaintiff accepts in satisfaction of his claim, he recovers the amount within the meaning of the 13 & 14 Vic. c. 61, s. 11. *Parr v. Lillicrap*, 1 H. & C. 615, 9 Jur. N. S. 80, 32 L. J. Exch. 150. But *see Boulding v. Tyler*, 9 Jur. N. S. 794; 32 L. J. Q. B. 85.

Where a plaintiff (in a case within the London Small Debts Act), upon a compulsory order of reference, by which the costs of the cause are to abide the event of the award, recovers less than 10*l.*, he is not entitled to costs, without an order. *Robertson v. Sterne*, 13 C. B. N. S. 248.

[2] The concurrent jurisdictions of the superior and county courts, when the plaintiff dwelt more than twenty miles from the defendant, or if the cause of action did not arise wholly or in some material point (*see Jackson v. Grimley*, 16 C. B. 383; 33 L. J. C. P. 238) within the jurisdiction of the court in which the defendant dwelt or carried on his business at the time of the action brought, is abolished by s. 5, 30 & 31 Vic. c. 42, enacting that if in any action commenced after passing of this act in any of the superior courts, the plaintiff shall recover a sum not exceeding 20*l.*, if the action is founded on contract, or 10*l.* if founded on tort, whether by verdict, judgment by default, or in demurrer or otherwise, he shall not be entitled to any costs of suit, unless the judge certify on the record that there was sufficient reason for bringing such action in the superior court, or unless the court or judge at chambers shall by rule or order allow such costs. A successful defendant, in the superior courts, is always entitled to his costs. In the county courts the judges have an uncontrolled discretion

as to allowing or disallowing costs; where no special directions are given, the costs abide the event, and execution issues for them as of course. On an appeal from a county court the master is bound by the county court scale, except as to the proceedings in the superior courts. *Horsfall v. Swan Brick Company*, 17 W. R. 119. The following cases decided on the prior acts may be usefully referred to.

The difficulty of a question as to the construction and effect of an agreement may justify the plaintiff in resorting to the superior tribunal, and an order for costs under the 15 & 16 Vic. c. 54, s. 4, obtained. *Courtenay v. Wagstaff—Reed v. Wagstaff*, 16 C. B. N. S. 110.

Where a plaintiff recovers in a superior court a sum not exceeding 20*l.* in an action of contract, or not exceeding 10*l.* in tort, the distance at which the plaintiff resides from the defendant is not to be considered as any ground for the exercise of the discretion to allow costs given to the court or judge by 30 & 31 Vic. c. 142, s. 5. *Thompson v. Dallas*, 3 L. R. Q. B. 358; 37 L. J. Q. B. 133; 16 W. R. 703; 18 L. T. N. S. 288.

Action in superior court for less than 20*l.*; judgment by default; execution by *fi. fa.*:—*Held*, that the poundage, fees, and expenses of execution are not *costs* of which plaintiff is deprived by the latter Act, and that he is entitled to them under the 123rd section of the first Act. *Armitage v. Jessop*, 2 L. R. 5 C. P. 12.

By 19 & 20 Vic. c. 108, s. 24, it is enacted, that "where in any action the debt or demand claimed consists of a balance not exceeding 50*l.* after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, the (county) Court shall have jurisdiction to try such action." Under this enactment if a plaintiff claims more than 50*l.* without admitting any set-off to reduce it to that amount, and the defendant, by proof of a set-off, reduces the amount recovered below 20*l.*, the plaintiff is entitled to costs, as there is no "admitted set-off" reducing the claim to 50*l.*, so as to give the County Court jurisdiction. *Walesby v. Gouldstone*, 35 L. J. C. P. 302. *See* s. 7, 30 & 31 Vic. c. 142.

When a plaintiff takes out of court in satisfaction of his demand a sum of money which has been paid into court, he does not recover that sum within the meaning of the 13 & 14 Vic. c. 61, s. 11; and consequently if the sum does not exceed 20*l.*, he is deprived of his costs. *Boulding v. Tyler*, 3 B. & S. 472.

Where, in an action of contract referred at the trial, an award was made in the plaintiff's favour for less than 20*l.* before the passing of the 30 & 31 Vic. c. 142:—*Held*, that the coming into operation of that act did not entitle the plaintiff to costs under the Statute of Gloucester. *Oldreive v. Puckeridge*, 37 L. J. Exch. 90; 16 W. R. 872; 18 L. T. N. S. 333; 3 L. R. Exch. 145.

The holder of a bill of exchange issued a writ of summons, in pursuance of the Bills of Exchange Act (18 & 19 Vic. c. 67), to which the defendant obtained leave to appear, and the plaintiff had a verdict for a sum below 50*l.* The cause was one for which a plaint might have been entered under the London Small Debts Extension Act, 1852:—*Held*, that the plaintiff was not entitled to costs. *Harris v. Swinburn*, 10 Jur. N. S. 1234; 33 L. J. Q. B. 313; 12 W. R. 978; 10 L. T. N. S. *Noble v. Bank of England*, 9 Jur. N. S. 8 L. T. N. S. 733.

Before trial reference by consent to the decision of an arbitrator, costs of the cause to abide the event of the award. The arbitrator awarded plaintiff only twenty shillings:—*Held*, plaintiff was not entitled to the costs of the action. "Recover" is satisfied by an award, without verdict or judgment. In this respect there is no distinction between a compulsory reference and one by consent. *Cowell v. Aman, Aberdare Col. Co.* 13 W. R. 715.

An action against a railway company as common carriers, for negligently carrying goods, is an action on the case, and therefore not on contract. And plaintiff recovering a verdict by default for less than 20*l.* is entitled to costs. *Tattan v. The Great Western Railway Co.*, 2 Ell. & Ell. 844.

A plaintiff who recovers less than 20*l.* in an action of contract commenced after the 20th of August, 1867, though before the 1st of January, 1868, is deprived of his costs by 30 & 31 Vic. c. 142, s. 5, though he dwelt more than twenty miles from the defendant. *Wood v. Hunt*, 16 W. R. 678—C. P. *Mispin v. Attwood*, 4 L. J. N. 134: *aliter*, if commenced before 20th August. 38 L. J. Q. B. 135.

A jury returned a verdict of 3*l.* 10*s.* in an action for damages to the plaintiff's reversion, by removing stone, where the pleas denied his possession, and set up a right under a crown lease. The defendant abandoned at the trial all question of the plaintiff's possession, and grounded his right upon a reservation in an inclosure act only:—*Held*, that the plaintiff was entitled to costs. *Williams v. Jones*, 15 L. T. (N. S.) 248, C. P.

Where a cause is referred to arbitration, by consent of parties, after issue joined, the costs of the cause to abide the event of the award, and the arbitrator finds all the issues for the plaintiff, and awards that a sum not exceeding 20*l.* is due from the defendant to the plaintiff in respect of the breaches of contract alleged in the declaration, the plaintiff recovers that sum within 13 & 14 Vic. c. 61, s. 11, and is deprived of costs by that section. *Cowell v. Amman Aberdare Colliery Company (Limited)*, 6 B. & S. 333; 11 Jur. N. S. 687; 34 L. J. Q. B. 161; 12 L. T. (N. S.) 451.

Plaintiff, before the 1st of January, 1868, recovered 5*l.* in an action of contract. After the 1st of January, 1868, he applied to a judge for an order for his costs under 15 & 16 Vic. c. 54, s. 4, on the ground that there was concurrent jurisdiction:—*Held*, that the

IV. Costs of the Day.[1]

V. Distributing Costs.[2]

VI. On withdrawing Pleadings.[3]

VII. Security for Costs.[4]

VIII. Of reviewing the Taxation, and Taxing on the Higher and Lower Scale.[5]

judge's power to make such order was not taken away by the County Courts Act, 1867 (30 & 31 Vic. c. 142), s. 33, that section not applying to actions in which a verdict had been obtained before the coming into operation of the act. *Restall v. the London and South-Western Railway Company*, 37 L. J. Ex. 89. *Cledere v. Puckeridge*, 37 L. J. Ex. 90.

Where an action is brought in a superior court involving some matters not within the jurisdiction of the County Court, but plaintiff only succeeded in respect of those matters which were within the jurisdiction of the County Court, plaintiff will be entitled to his costs, if the case was such as could not practically have been tried in the County Court. *Williams v. Jones*, C. P. 15 L. T. 248.

[1] If, when a cause is called on for trial, the plaintiff does not appear, the defendant, to secure the costs of the day, must have the jury sworn, and claim a nonsuit. If the defendant, though present in court, allows the cause to be simply struck out, he will not, under ordinary circumstances, be entitled to the costs of the day. *Smith v. Marshall*, 33 L. J. Q. B. 332.

[2] When a declaration contains a count for slander with other counts, and the jury finds a general verdict for the plaintiff, with forty shillings damages, the verdict must be apportioned between the different counts, and the plaintiff is only entitled to recover so much for costs as the damages, which are apportioned to the count for slander, amount to. *Burton v. Low*, 15 W. R. 791; 16 L. T. (N. S.) 385, C. P.

Where the issue raised is a divisible one, the verdict should be entered distributively, so as to entitle each party to costs proportioned to his success in the action. *Paterson v. Harris*, 2 B. & S. 814; 9 Jur. N. S. 173.

[3] Where a defendant withdraws his former pleas, and pleads a matter of defence which arises after such former pleading, and the plaintiff confesses the plea, he is entitled to his costs up to the pleading of such plea, under Reg. Gen. 1853, r. 23, although the plea contains no allegation that the matter of defence arose after the last pleading. *Howarth v. Brown*, 32 L. J. Exch. 99.

[4] A plaintiff foreigner must give security for costs, but not a defendant foreigner. *The Beatrice*, 36 L. J. Ad. 10. *Nelson v. Ogle*, 30 L. J. Ex. 151.

It is no objection to a motion for security that the plaintiff (a foreigner) has assigned his interest in the result of the action, that the fact was known to the defendant more than a year ago, and that the cause is ripe for trial. *Zychlinski v. Maltby*, 14 C. B. (N. S.) 322.

Where a foreign government is defendant in a suit for necessaries for a ship, and plaintiff in a suit for possession, the court will only order the foreign government to give security for costs in the suit in which it is plaintiff, although in the other suit it virtually undertakes to prove its right to possession. *The Beatrice*, 36 L. J. Adm. 10. *Nelson v. Ogle*, 30 L. J. Ex. 151.

As to a company in course of winding up who are hopelessly insolvent under 20 & 21 Vic. c. 14, s. 24, giving security, *see Southampton Improved Steamboat Company v. Pinnock*, 1 L. R. Ex. 371. As to Insolvent Executor, *see Re Sykes*, 4 L. J. N. 159.

The plaintiff having brought an action of ejectment against the defendant, a chancery suit was substituted by arrangement between the parties, and subsequently the bill in equity was dismissed. After this the plaintiff brought a second action of ejectment against the defendant:—*Held*, that the defendant might be called upon to give security for costs, the first action of ejectment not having been successfully prosecuted. *Skene v. Davis*, 14 L. T. (N. S.) 622, Q. B.

A mandamus having issued on the prosecution of a corporation, and judgment having been given for the crown, which was reversed in the Exchequer Chamber, and a writ of error to the House of Lords being pending, and the expenses of the mandamus having exceeded 200*l.*, the court made a rule absolute to increase the security to such sum as the coroner and attorney of the court should think reasonable. *Reg. v. The Commissioners of the Port of Southampton*, 6 B. & S. 407; 34 L. J. Q. B. 164.

A plaintiff, since action, executed a deed of inspectorship for the benefit of his creditors, and by it he covenanted to give up the whole of his property when required by the inspectors to do so. The action was being proceeded with for the benefit of the creditors:—*Held*, that the defendant was entitled to security for costs. *Smith v. Saunders*, 16 L. T. (N. S.) 386, C. P.

[5] The court, in matters where the master has a discretion, will not interfere, unless he has plainly and obviously erred. *Clarke v. Tyne Commissioners*, 3 L. R. C. P. 230; 37 L. J. C. P. 110. *Bell v. Aitkin*, id. 168. It has no jurisdiction to review the taxation of a master made under the Lands Clauses Act, 1845. *Owen v. London and North-Western Railway Company*, 17 L. T. (N. S.) 210, Q. B.; 37 L. J. Q. B. 35. *See* 31 & 32 Vic. c. 119, ss. 41-45.

Nor a taxation of costs under an act "that

IX. Of the Allowance for the Costs of Counsel, Witnesses, and of Documentary Evidence.[1]

X. Preparing for Trial.[2]

all costs payable in respect of claims under it shall be taxed by a master of a superior court of law, according to the rules, and fees paid on taxation of costs in actions at law." *Wraithley In re*, 4 H. & C. 74; 1 L. R. Exch. 54; 35 L. J. Exch. 60; 13 L. T. (N. S.) 440; 11 Jur. 954.

The costs incurred in a colony under a commission must be taxed in England upon the scale which would be allowed in the colony. 13 W. R. 486.

Where, through some mistake, the master has not exercised his discretion in the allowance of items, erroneously conceiving that he was not entitled to do so, the court will direct him to review his taxation, in order to exercise his discretion. So, if he errs in principle between taxation in criminal and in civil cases. *Reg. v. London, Chatham, and Dover Railway Company*, 12 Jur. N. S. 230, Q. B.

Under the act suspending proceedings against the London and Chatham Railway Company, taxing costs is a proceeding, and ought to be suspended. *R. v. London and Chatham R. C.* 37 L. J. Q. B. 7.

Where two causes of action are joined, in one of which a writ of trial could not be issued, and in the other it could, and the plaintiff does not recover in respect of the former, but recovers a sum not exceeding 20*l.* in the latter, the plaintiff is entitled to costs upon the higher scale. A first count was for unliquidated damages, and the second for work and labour. The defendant succeeded upon the first count, and the plaintiff recovered less than 20*l.* upon the second:—*Held*, that the master was right in taxing the plaintiff his costs upon the higher scale. *Cross v. Hutchinson*, 7 B. & S. 849.

An action on a contract was removed from a county court into the superior court, at the instance of the defendant, and the plaintiff obtained a verdict for less than 20*l.*:—*Held*, that as there was no indorsement on the writ of summons, rule 7 of the directions to the taxing masters, H. T. 1853, did not apply, and the plaintiff was entitled to his costs on the higher scale. *Perry v. Bennett*, 33 L. J. C. P. 45; 14 C. B. N. S. 402. *Copley v. Hemmingway*, 15 C. B. N. S. 447; 33 L. J. C. P. 152; 9 L. T. 257. *See* 30 id. Ex. 110.

A summons was indorsed for debt of more than 20*l.*, consisting of separable items, the defendant pleaded, except as to part of the claim, never indebted: and as to that part, which also exceeded 20*l.*, a tender of it before action, and payment of it into court. At the trial the jury found for defendant as to the tender, and for the plaintiff that the sum tendered was too little, by 2*l.* 8*s.* 10*d.*, to satisfy his claim:—*Held*, that the plaintiff had recovered 2*l.* 8*s.* 10*d.* only, and was not entitled to his costs on the higher scale. *James v. Vane*, 2 El. & El. 883.

On an inquiry before a sheriff on a judgment by default, the jury gave damages on one breach only, and none on two others. The master allowed the expenses of two witnesses called to prove the second and third breaches:—*Held*, that the omission to give nominal damages could be rectified, and that the materiality of the witnesses was for the discretion of the master. *Dods v. Evans*, 15 C. B. 18.

[1] A plaintiff in an action having come from India to give evidence, and being detained in England for eighteen months by reason of delays created by defendants, and having recovered a sum of 350*l.* was allowed, on taxation of costs, 450*l.* subsistence money, and 150*l.* for his passage back to India. The court discharged a rule to review taxation. *Calvert v. Scinde Ry.* 11 Jur. N. S. 245; 18 C. B. 306. To entitle the successful party to the costs of counsel's attendance on a commission abroad, special circumstances must be shown for such attendance. *Lecocq v. The South-Eastern Railway Company*, 6. B. & S. 415; 14 L. T. N. S. 401 Q. B.

Refresher fees are allowable only when the case is so circumstanced as that it may be called on, and not allowable when a cause has been ordered to stand over to await the decision of a court of error in another case. *Hughes v. Birkenhead Improvement Commissioners*, 16 L. T. N. S. 350, Q. B.

The master refused, upon taxation, to allow counsel's fees for consultation on a demurrer; or costs of a conference concerning special admissions:—*Held*, that these and similar matters were within the master's discretion. *Kidston v. Empire Marine Insurance Company*, 16 L. T. N. S. 286.

[2] A plaintiff is not entitled to the costs of preparing for trial, until after notice of trial; and that even though the defendant has obtained repeated orders for time to plead, and is under terms to take short notice of trial, or such notice as the plaintiff can give. *Freeman v. Springham*, 14 C. B. N. S. 197; 32 L. J. C. P. 249; 8 L. T. N. S. 428; nor the defendant's costs of "preparing for trial" where a plaintiff discontinues before notice of trial, even though liberty had been reserved to the plaintiff to set down the cause for trial before issue joined, and a special jury had been struck. *Curtis v. Platt*, 16 C. B. N. S. 465; 10 Jur. N. S. 823; 33 L. J. C. P. 255; 10 L. T. N. S. 383.

The costs of examination upon interrogatories, of a witness about to go abroad, will not be allowed as costs in the cause where the depositions are rendered useless

XI. Staying Proceedings till payment of Costs of prior Proceedings.[1]
XII. Issuing Execution where Action not exceeding 20*l.*

COST-BOOK. *See* Joint-Stock Company; Mines.
COTTON-FACTORY. *See* Factory.
COUNSEL. *See* Barrister; Compromise.
COUNTY COURTS. 3 Abr. 330.

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by the subsequent attendance of the witness at the trial. *Ridley v. Sutton*, 1 H. & C. 741; 9 Jur. N. S. 358; 32 L. J. Exch. 122; 7 L. T. N. S. 693. But costs of examining a very old witness shortly before the trial, were allowed, although he was able to attend at the assizes, but was not examined; and by reason of his age and infirmity, the expenses of his son's journey and attendance upon him were also allowed. *Beaufort (Duke) v. Ashburnham (Lord)*, 13 C. B. N. S. 598; 9 Jur. N. S. 822; 32 L. J. C. P. 97; 7 L. T. N. S. 710.

In an action involving the title to a manor, an antiquarian's charges for searches, translations of ancient records, &c., were allowed. *Id.* But short-hand notes not as between party and party. *Id. Churleen v. Frewen*, 36 L. J. Ch. 660.

The master having, on a taxation as between party and party, allowed 105*l.* as "instructions for brief," though the witnesses were not very numerous, or the brief very long, the court declined to interfere with his discretion. *Beaufort (Duke) v. Ashburnham (Lord)*, 13 C. B. N. S. 598; 9 Jur. N. S. 822; 32 L. J. C. P. 97; 11 W. R. 267; 7 L. T. N. S. 710. Bill being dismissed with costs, the costs of three counsel were allowed on taxation in consequence of the length and intricacy of the case. And depositions *taken abroad* running to a great length, an allowance was made to defendant's solicitor for perusing them. *Wentworth v. Lloyd*, 1 L. R. 2 Eq. 607; 35 L. J. 642.

[1] Where a plaintiff having failed in an action brings a second action for substantially the same cause, unless the plaintiff satisfies the court that a real probable cause of action exists it will stay the second action until the costs of the former have been paid. *Cobbett v. Warner*, 2 L. R. Q. B. 108; 36 L. J. Q. B. 86; 16 L. T. N. S. 150.

[2] The right of a party entitled to execution to levy the expenses of the execution, which is conferred by 15 & 16 Vic. c. 76, s. 123, is not taken away by 19 & 20 Vic. c. 108, s. 30, which provides that when, in an action of contract brought to recover a sum not exceeding 20*l.*, the defendant suffers judgment by default, "the plaintiff shall recover no costs," since the costs of the execution are accessory to the execution, not to the judgment. *Armitage v. Jessop*, 36 L. J. C. P. 63.

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XIII. As to Interrogatories. *See* ss. 51 to 54; Attaching Debts, ss. 60 to 67; Equitable Defences, ss. 83 to 86, Act 1867.

I. Of the Court, and the Officers of the Court.[1]

II. Of Counsel and Attorneys practising therein.[2]

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[1] No action can be brought against a judge for words spoken by him while trying a cause, although alleged to be spoken falsely and maliciously. *Scott v. Stansfield*, 18 L. T. 572; 37 L. J. Ex. 155; 3 L. R. 220. Nor will the court grant a rule to compel him to vary his decision on a point of law where the amount is too small for an appeal. 18 L. T. 657.

By 29 & 30 Vic. c. 14 s. 1. Vacancies in the office of treasurers of county courts not to be filled up. 2. Treasury to provide for examination of accounts of registrar and other officers of the courts. 3. Treasurers may retire upon superannuation in certain cases. 4. If person appointed to examine accounts be a treasurer's clerk, after probation he shall be deemed a civil servant. 5. Treasury to make rules for keeping and rendering accounts by registrars and other officers of the courts, and direct payments by registrars to be paid into Bank of England. 6. Accounts to be rendered to Audit Board. 7. Accounts to be audited. 8. Property of courts to vest in a person to be appointed by the Treasury. 9. Court-houses, &c. may be provided. 10. Registrar to send to Commissioners of audit an account of all sums paid by him to Paymaster-General. 11. On a vacancy in the office of high bailiff, the registrar of the court shall perform the duties of high bailiff if he shall have been appointed a registrar subsequent to the passing of this act. 12. Additional remuneration to registrar for performing the duties of high sheriff. 13. No person to be high bailiff of more than one court. 14. Salaries of future appointed registrars.

By 30 & 31 Vic. 142 s. 18, approval of the treasury substituted for approval of "Secretary of State," in secs. 48 & 50, 9 & 10 Vic. c. 95. 19. Lord Chancellor to exercise power given to a secretary of State by s. 56 9 & 10 Vic. c. 95. 20. Judges to be auxiliary to one another, and deputy of judge or registrar to have all the power of his principal. 21. Registrars who may act as high bailiff under 29 & 30 Vic. c. 12, to have the power of the officer whom they may succeed. 22. Bailiffs to serve any process directed to be served by high bailiff. 23. On death of a joint registrar survivor to be sole registrar. 30. Relates to remuneration of registrar and high bailiff in matters under the act. As to applying for a rule instead of a *mandamus* against a judge or officer of the court. *See* 19 & 20 Vic. c. 108, s. 93; 21 & 22 *Id.* 74, s. 4.

The authority given by 19 & 20 Vic. c. 108, s. 43, and 21 & 22 Vic. c. 74, s. 4, to the superior courts to grant a rule calling upon the judge of a county court, or an officer of such court, to show cause why they should not do an act relating to their respective offices, does not confer any jurisdiction to interfere with an order of the judge of the county court as to costs. *Churchward v. Coleman*, 36 L. J. Q. B. 57.

The high bailiff of a county court is liable, to the same extent as the sheriff, for the wrongful act of a person employed by one of his sub-bailiffs. *Burton v. Le Gros*, 34 L. J. Q. B. 91.

Where, therefore, a warrant to the high bailiff, to levy on the goods of B. was delivered for execution to one of the sub-bailiffs, and he seized goods of B. and wrongfully sold them contrary to 9 & 10 Vic. 95, s. 106, the high bailiff was held liable. *Id.*

In such an action, a notice of action is sufficient, although the goods were not described to be the goods of the plaintiff, and no amount of damages was stated. *Id.*

[2] It is for judge to determine whether an attorney is acting generally in the action so as to qualify him as advocate. *In re Bookham*, 37 L. J. C. P. 276; 3 L. R. C. P. 490.

Bovill, C. J., said that there was nothing to prevent such an attorney, who was clerk to another attorney, appearing on behalf of a party to a cause, only he must satisfy section 10 of Act, by being an attorney acting generally in the action for such party. *See* 3 L. J. N. C. 291–448.

The superior court will not interfere with the discretions of inferior ones as to who may act as advocates. *Ex parte Evans*, 9 Q. B. 279. *Reg. v. Spooner*, 18 L. T. Q. B. 325.

In *Collier v. Hicks*, 2 B. & Ad. 663, where the question was on the right of an attorney to act on the hearing of an information before justices at a police-office. Parke, B. said:—"No person has a right to act as an advocate without the leave of the court,

III. Jurisdiction of the County and Inferior Courts of Law prior to the Act of 1867.[1] 30 & 31 Vic. c. 142.

IV. Abolition of the Concurrent Jurisdiction of the Superior Courts.[2]

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which must of necessity have the power of regulating its own proceedings in all cases where they are not already regulated by ancient usage. In the superior courts, by ancient usage, persons of a particular class are allowed to practise as advocates, and they could not lawfully be prevented; but justices of the peace may exercise their discretion, whether they will allow any, and what persons to act as advocates before them."

[1] In order to give jurisdiction to a county court, that the cause of action arose within the district, it is a condition precedent that leave to issue the summons be granted pursuant to sect. 60 of 9 & 10 Vic. c. 95, or sec. 15 of 19 & 20 Vic. c. 108; and an action having been tried and judgment given without such leave, the court refused to rule the judge of the county court to issue execution, on the ground that he had no jurisdiction. *Brown v. London and North-Western Railway Company*, 32 L. J. Q. B. 318; 8 L. T. N. S. 695; 4 B. & S. 326; 10 Jur. 234.

The fact of one item in a tradesman's bill being separated from the rest by an interval of several years, did not prevent its operating (if accruing within the jurisdiction of the county court within which the defendant dwells) to take the case out of the concurrent jurisdiction clause of the 9 & 10 Vic. c. 95. *Copeman v. Hart*, 14 C. B. N. S. 731.

A defendant, residing and carrying on business in London, wrote to the plaintiffs, in S., ordering them to do work for him. The letter was received by the plaintiffs, and the work was done, in S. A summons having issued against the defendant, in the county court of S., by leave of the registrar, to recover the amount due for such work:—*Held*, that the whole cause of action arose within the district of that court, and that the registrar therefore had jurisdiction to issue the summons. *Newcomb v. De Roos*, 2 El. & El. 271.

The 19 & 20 Vic. c. 108, s. 4, has not deprived the county court of its jurisdiction to issue a summons under the Bills of Exchange Act, 18 & 19 Vict. c. 67. *Holborow v. Jones*, 38 L. J. C. P. 22; 4 L. R. C. P. 14; 19 L. T. N. S. 320; 17 W. R. 54.

Under 19 & 20 Vic. c. 108, s. 24, any debt or demand claimed or recoverable by the "admitted set-off" means a set-off admitted by the plaintiff at the time of the action brought. *Walsby v. Gouldstone*, 1 H. & R. 625; 35 L. J. C. P. 302.

Antecedent to the 30 & 31 Vic. c. 142, all actions and proceedings might be instituted and decided in a superior court at the election of the plaintiff if he dwelt more than twenty miles from the defendant, or if the cause of action did not arise wholly or in some material point (*See Jackson v. Grimley*, 16 C. B. 380; 33 L. J. C. P. 238) within the jurisdiction of the court within which the defendant dwelt, or carried on his business at the time of the action brought, or if any officer of the county court were a party, except in respect of any claim to any goods and chattels taken in execution of the process of the court.

[2] The provisions conferring a concurrent jurisdiction are by the s. 1 of the Act of 1867, repealed. By s. 7, 30 & 31 Vic. c. 142, an action of contract within, or reduced by set-off, or otherwise, to within 50*l.*; the judge of a superior court may, on the application of the defendant within eight days after the service of the writ, or on the application of either party, on terms after issue joined, order the cause to be tried by a county court. And by s. 10, in actions of tort, whatever may be the amount of damages claimed, the judge of the superior court may remit the cause for trial to a county court, if the plaintiff be unwilling or unable to give security for costs in the superior court, or fails to satisfy the judge that the cause of action is a fit one to be prosecuted in a superior court. S. 5 provides, if in any action commenced after the passing of the act, in any of the superior courts, the plaintiff shall recover a sum not exceeding 20*l.*, where the action is founded on contract, or 10*l.* where it is founded on tort, he shall not be entitled to any costs of suit, unless the judge certify on the record that there was sufficient reason for bringing such action in the superior court, or unless the court, or a judge at chambers, shall by rule or order allow such cost. As to the distinction between actions of tort and actions of contract as relates to costs. *See Legge v. Tucker*, 1 H. & N. 500; 26 L. J. Ex. 71. *Smith v. Horner*, 3 C. B. 829. *Blackmore v. Higgs*, 15. *Id.* 790. The words "the plaintiff shall *recover*," mean not merely recovering by verdict, but to all cases in which he obtains damages. Hence where there is a reference of a cause, the court to abide the event whether it be referred compulsorily, or by mutual consent, or in whatever stage of the case if the costs are to abide the event, the plaintiff is deprived of costs if the award in his favour be for less than 20*l.* in action on contract, or 10*l* in action of tort. *See Smith v. Edge*, 33 L. J. Ex. 9. *Robertson v. Stern*, 13 C. B. 248. *Jones v. Jones*, 7; id. 832. *Cowell v. Ammon Colliery*, 6 B. & S. 833; 34 L. J. Q. B. 161.

The 30 & 31 Vic. c. 142, s. 5, in effect repeals the 13 & 14 *id.* c. 61, as to a suggestion or application to deprive the plaintiff of costs. He loses them unless he recovers the prescribed amount. The 5th sec. places judgment by default and upon demurrer on the same basis as judgments on verdicts; by the same section if the judge of the superior

V. Jurisdiction at Law under 30 & 31 Vic. c. 142.[1]

court grant a certificate that there was sufficient reason for bringing the action, then the plaintiff is entitled to recover his costs as in ordinary cases.

[1] By s. 1 plaint may be entered in the county court within the district of which the defendant or one of the defendants shall dwell or carry on his business at the time of bringing the action or suit, or it may be entered by leave of the judge or registrar in the county court within the district of which the defendant or one of the defendants dwelt or carried on business at any time within six months next before the time of action or suit brought, or with the like leave in the county court in the district of which the cause of action or suit wholly or in part arose.

By s. 2 in any action brought in a county court for the price or value of goods or chattels which, or some part of which, were sold and delivered to the defendant to be dealt with in the way of his trade, profession, or calling, the plaintiff may, at his option, cause issue of special summons, and if defendant shall not give notice of intention to defend, judgment may be entered up.

By s. 3 proceedings commenced in a Metropolitan county court the same are to be continued therein if the defendant resides in the district of one of such courts.

By s. 4 no action can be brought or maintainable in any court to recover any debt or sum of money alleged to be due in respect of the sale of any ale, porter, beer, cider, or perry, which, after the commencement of the act (January 1, 1868), was consumed on the premises where sold or supplied, or in respect of any money or goods lent or supplied, or of any security given for, in, or towards the obtaining of any such ale, porter, beer, cider, or perry. As to spirits, see 24 Geo. 2, c. 40, s. 12, amended by 25 & 26 Vic. c. 38.

By s. 5, if in any action commenced after the passing of the act, in any of the superior courts, the plaintiff shall recover a sum not exceeding 20*l.* where the action is founded on contract or 10*l.* where it is founded on tort, he shall not be entitled to any costs of suit, unless the judge certify on the record that there was sufficient reason for bringing such action in the superior court, or unless the court, or a judge at chambers, shall by rule or order allow such costs.

S. 6 repeals s. 7, 3 & 4 Wm. 4, c. 42, authorising the trial of issues before a sheriff when sum claimed does not exceed 20*l.*

By s. 7, where in any action of contract commenced in any of the superior courts of common law the claim does not exceed 50*l.*, or where the claim should be reduced by part payment or set off to 50*l.*, it shall be lawful for the defendant to apply to a judge at chambers for a summons to the plaintiff, to show cause why such action should not be tried in the county court, and the judge shall, unless there be good cause shown to the contrary, order such action to be tried accordingly.

Ss. 8 & 9 relate to proceedings in equity. See *post* 151.

By s. 10 any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort that may be brought in a superior court, may make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should the verdict not be found for the plaintiff, and thereupon the judge may make an order that unless the plaintiff shall give full security for costs, or satisfy the judge that he has a cause of action fit to be tried in a superior court, all proceedings in the action shall be stayed, or that the cause be remitted for trial to the county court.

By s. 11 all actions of ejectment, where neither the value of the lands nor the rent payable in respect thereof shall exceed 20*l.*, may be brought in the county court.

By s. 12 county courts shall have jurisdiction to try any action in which the title to any corporeal or incorporeal hereditaments shall come in question where neither the value of the hereditaments in dispute nor the rent shall exceed 20*l.* a year.

The section as to remitting action of tort from superior court applies to action commenced before the act. *Kemfray v. Draper*, 37 L. J. Q. B. 80; 3 L. R. 160; 18 L. T. 540.

In *Austen v. Sellman* at chambers, Willes, J., held an action for negligence to be within s. 10, although it was urged that the accident was a serious one, and 50*l.* would not compensate, the judge overruled the objection, and made the order for security for costs or cause it to be tried in county court.

The county courts have no original jurisdiction in actions for torts enumerated in s. 10.

The words "rent payable in respect thereof," in s. 11, is meant the rent due to the person bringing the ejectment, although his lessee may have sub-let the premises at a rent greater than the amount to which the jurisdiction of the county court is limited. *In re Brown v. Cocking*, 37 L. J. Q. B. 250; 3 L. R. Q. B. 672; 18 L. T. 560. In estimating the value the ground-rent should not be deducted, it may be tested by what a tenant would give for it in the market. 38 L. J. Q. B. 6.

There is no rule respecting the notice of trial necessary when a cause commenced in a superior court is ordered to be tried in a county court under 19 & 20 Vic. c. 108, s. 262; it is enough that the notice is reasonable. *Ipswich Gas Light Company v. Norman*. 7 B. & S. 847.

A judge of any of the superior courts sitting at chambers has power under 10th section to make the order remitting the

cause to a county court, although he may not be a "judge of the court in which the action is brought." But his order is subject to be reviewed, although the section speaks of satisfying the judge that he has a cause of action fit to be prosecuted in the superior court. *Owens v. Woosman*, 3 L. R. Q. B. 469; 37 L. J. 159.

Order in Council, 18 Nov. 1867, directs that certain provisions in the Common Law Procedure Act, 1854, shall be extended and applied to county courts, that is, ss. 50 to 54, 60 to 67, 83 to 86, and all powers and incidents thereto.

The following is a brief analysis of some of the principal orders and rules of 1867, taken from L. J. N. for 1868:—

68. In actions of contract sent for trial from a superior court into the county court, plaintiff must lodge with the registrar original writ, judge's order, name, address, and description of himself and of defendant, particulars of demand (if any) endorsed on writ, with as many copies of the same as there are defendants.

70. In actions of tort remitted by superior court, the same formalities are to be observed, except that in lieu of the endorsement on the writ plaintiff must lodge a concise statement in writing, signed by himself or his attorney, of his cause of action.

72. In actions of defamation remitted by superior court, a defendant intending to avail himself of 6 & 7 Vic. c. 96, ss. 1, 2, must give signed notice to registrar five days before trial.

75. Where defendant pays into court under 6 & 7 Vic. c. 96, ss. 1, 2, the rules applicable to ordinary payments into court in actions of contract are to apply.

80. Leave to deliver interrogatories (C. L. P. 1854, s. 52) is granted by registrar upon affidavit by party, or by his attorney by leave, that deponent will derive material benefit from the discovery, and has a good cause of action or defence on the merits; party interrogated to return answers to the registrar within time appointed in the order.

81. Party objecting to answer to file affidavit stating grounds of objection, and his readiness to show cause to the court.

82. If cause is shown successfully, judge may proceed or adjourn the case; otherwise, judge may adjourn the cause and make an order to answer, and to pay such costs as he shall think fit.

94. In actions of defamation a defendant, intending to rely on the truth of the matter, must give notice to registrar five "clear days" before return-day.

95, 96. Similar notice to be given of equitable defences, or statutory defences to actions of tort.

98. Tender no defence without payment into court.

145. Plaintiff may, before cause is called on, lodge with registrar name, address, and description of debtors to defendant, and in that case defendant may, immediately after judgment, be orally examined as to debts due to him.

146. Debtor to defendant in such last-named case may, if present, be required forthwith to show cause why he should not pay his debt into court—an order against him to be enforced as other orders of the court—but garnishee, obeying such order, to pay no costs.

147. In other cases plaintiff may at any time after judgment upon affidavit of indebtedness of garnishee, and of his residence within the jurisdiction, enter a plaint in the nature of a *scire facias* against the garnishee.

148, 149. Personal service on garnishee, who, on paying five "clear days" before return-day, is not liable for costs.

175. Claimant of goods in interpleader claiming also damages from execution creditor or high bailiff must annex claim for damages to particulars of claim for goods.

176. Notice to be given to high bailiff of grounds for and amount of such claim.

177. High bailiff or execution creditor may pay into court.

257. Actions under 30 & 31 Vic. c. 142, s. 12 (Title to Land, &c.), other than actions of ejectment, to be similar in all respects to ordinary actions in county courts, except that plaintiff must on entry of plaint deliver to registrar statement of cause of action, and of the particulars thereof, such statement to be deemed part of the summons.

258. Either party to action under said 12th section may require a jury.

Cases under Bills of Exchange Act, 1855.—271. Judge may order plaintiff to proceed (subject to conditions) as if defendant had been served, where he is satisfied that bailiff has made all reasonable efforts to effect service, or that summons has come to knowledge of defendant, or where defendant wilfully evades service.

272. Defendant applying for leave to defend must by affidavit show good grounds for leave, and judge or registrar may require security.

273. Where leave granted, cause to be appointed for first convenient sitting, and notice given to plaintiff.

274. No order on a judgment by default under 18 & 19 Vic. c. 67, need be drawn up or served.

275. Application to set aside judgment to be made to the judge of the court. Execution stayed on security as in cases of appeal.

Statutes of limitations.—220. Operation of statute prevented by successive summons issued without leave. Each summons in force twelve calendar months, including day of issue. Usual fee on entering plaint in first instance. No fee for subsequent summonses.

221. If summons served in time to prevent operation of statute, and after service and after statutory limitation either party dies, proceedings may be taken by or against the survivor, or by or against the personal representative of deceased within one year from the day of holding the court at which the summons required the defendant to appear.

VI. Of a New Trial.[1]

VII. Particular Suits and Proceedings in the County Court.[2]

VIII. Of County Court Appeals.[3]

[1] A motion for a new trial in an action of contract, tried under judge's order in a county court, must be made in the superior court in which the writ was issued. *Balmforth v. Pledge*, 35 L. J. Q. B. 169. And the time within which a motion for a new trial must be made, runs from the day of the hearing of the cause, and not from the filing in the master's office of the registrar's certificate of the result. *Copcutt v. Great Western Railway Company*, 2 L. R. C. P. 465; 36 L. J. C. P. 240; 16 L. T. N. S. 384.

Where a cause in a superior court has been tried before a county court judge, the notes of the judge must be produced and verified by defendant on motion for a new trial, unless the motion is made by counsel who was present at the trial, but where the judge had refused a copy of his notes, and the time for moving had nearly expired, the court allowed the rule to be drawn up,—notes to be in court on argument of the rule. *Taylor v. Holt*, 3 H. & C. 454. See 15 C. B. 45.

[2] By s. 31, 30 & 31 Vic. c. 142, the high bailiff is enabled to interplead when claims to goods taken on execution are made. See rules 1867, 174 to 180. A county court judge gave judgment on an interpleader issue for the execution creditor, with costs. The court, upon appeal, reversed the judgment, and ordered a new trial; holding that the whole judgment, including that part of it which related to the costs, was thereby reversed. *Gage v. Collins*, 2 L. R. C. P. 381; 15 W. R. 568; 36 L. J. C. P. 144. Where the judge of a county court erroneously decided that the claimants, under an interpleader summons, had not given a sufficient particular of their claim, and ordered them to pay costs, the court refused to set aside the order as to the costs, although it ordered the judge to hear and adjudicate upon the claim. *Churchward v. Coleman*, 36 L. J. Q. B.

The recovery of possession, 19 & 20 Vic. c. 108, applies where the relation of landlord and tenant is admitted to exist. If the defendant raises a question of title, which the judge considers as *bonâ fide*, the jurisdiction is ousted unless within s. 12, Act 1867. *Pearson v. Glazebrook*, 3 L. R. Ex. 27; 37 L. J. 15. A county court order for giving up possession of premises, made against a person holding under the tenant, under 19 & 20 Vic. c. 108, s. 50, is not conclusive evidence of title in a subsequent action against him for mesne profits. *Campbell v. Loader*, 3 H. & C. 520; 34 L. J. Ex. 50.

By the Friendly Societies Act, 18 & 19 Vic. c. 63, s. 41, the county court of the district within which "the usual or principal place of business of the society" is situate, is to have jurisdiction over disputes with members, in certain cases:—*Held*, that it was not sufficient for a prohibition to show that the usual and principal place of business of the society is not situate within the district, without showing also that the society has no usual place of business within such district. *Shea v. The United Sick and Burial Society of St. Patrick*, 37 L. J. C. P. 50.

[3] A county court judge is bound, on the application of an appellant who has complied with the requirements of 13 & 14 Vic. c. 61, s. 14, to settle and sign a case for appeal, though presented to him for that purpose at a court subsequent to that holden next after twelve clear days from the day on which judgment was pronounced, the effect of rule 145 of the county court rules being not to take away the right of appeal on a failure to comply with the rule, but merely to subject a non-complying appellant to the execution, notwithstanding the appeal. *Hacking v. Lee*, 2 El. & El. 906.

The superior courts of common law, not having any jurisdiction, either original or appellate, in respect of proceedings under 25 & 26 Vic. c. 89, no appeal lies to it from an order of a county court judge made in a winding-up matter under s. 17. *Henderson v. Bamber*, 19 C. B. N. S. 540.

Appeal does not lie from an order of county court judge to stay proceedings in an action in winding-up under Industrial and Provident Societies Acts. *Henderson v. Bamber*, 25 L. J. C. P. 65; 19 C. B. 540. It is questionable whether the judge had the power to make such order, nor from City of London Small Debts Act. *Harper v. Pole*, 36 L. J. C. P. 32. Costs on appeals from the county court (or sheriff's court, London) are, in the Common Pleas, always awarded to the successful party, unless there is something very exceptional in the circumstances. *Schroder v. Ward*, 13 C. B. N. S. 10; 18 *id.* 161; 32 L. J. C. P. 150; 7 L. T. N. S. 825. An application for costs on an appeal from a county court will not be entertained unless made at the time the case is disposed of. *Taylor v. Great Northern Railway Co.* 1 L. R. C. P. 430; 12 Jur. N. S. 372,—C. C. A.

Where an appeal is brought from a county court, the Court of Common Pleas, on reversing the judgment and granting a new trial, have power to grant the appellant not only the costs of the appeal, but also the costs of the first trial below. *Schroder v. Ward*, *supra*, and *Alcock v. Delay*, in the Q. B. followed; and *Gee v. The Lancashire and Yorkshire Railway Company*, in the Exchequer, disapproved of. *Gage v. Collins*, 36 L. J. C. P. 144.

Where in a plaint in a county court, the claim was for a sum under 20*l.* as the balance of an account, but in consequence

IX. Of the Controlling Jurisdiction of the Superior Courts, and of the Removal of Proceedings into the Superior Courts.[1]

X. Of the Jurisdiction in Equity.

(A) *Of the creation of the Jurisdiction.*[2]

(B) *Of the Court and its Officers, their powers, duties, and salaries.*[3]

(C) *Of the subject-matter of the Jurisdiction.*[4]

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of a miscalculation the balance was above 20*l.* and the plaint was amended at the request of defendant by making it for more than 20*l.*, and then plaintiff abandoned the excess and obtained a verdict for under 20*l.*:—*Held*, that plaintiff could not abandon the excess so as to deprive defendant of his right to appeal. *North v. Holroyd*, 3 L. R. 3 Ex. 69; 37 L. J. 42; 17 L. T. 575.

The 14 sect. requiring that a party appealing from a county court decision shall give a bond for costs within ten days, is now qualified by the 134th rule, and the appellant was held to have complied with the section and rule, where within the ten days he had given the names of the sureties to the proposed bond, who were found sufficient. *Waterton v. Baker*, 3 L. R. Q. B. 173; 37 L. J. 65; 3 L. R. Q. B. 173; 17 L. T. 468.

By s. 13, 30 & 31 Vic. c. 142, an appeal, on the same grounds and subject to the same conditions as are provided by the 13 & 14 Vic. c. 61, shall be allowed in all actions of ejectment in which the title to any corporeal or uncorporeal hereditaments shall have come as questions, and with the leave of the judge an appeal shall be allowed in actions in which an appeal is not allowed if the judge shall think it reasonable and proper:—*Held*, that this enactment affected only the mode of procedure, and therefore applied to actions pending at the time when the act came into operation. *Rathbone v. Munn*, 18 L. T. N. S. 856.—Q. B. Where, in an action in the county court, the claim, as shown by plaintiff's particulars, exceeds 20*l.*, plaintiff cannot, by abandonment of the excess at the trial, deprive defendant of his right of appeal. *North v. Holroyd*, 37 L. J. Ex. 42; 3 L. R. Ex. 69; 17 L. T. 57.

[1] Plaint 11 Sept., application on 24 Oct. for a prohibition on the 24th of October:—*Held*, that it had been delayed too long, and that on that ground a prohibition ought not to issue. *Denton v. Marshall*, 1 H. & C. 654; 9 Jur. N. S. 337; 32 L. J. Exch. 89.

Rule calling on county court judge to proceed and hear a plaint, and to set aside an order of the county court judge as to costs. The first part made absolute, the latter discharged, the court holding that (although the order as to costs was necessarily wrong) they had no jurisdiction to deal with an order as to costs in the county court. *Whitehead v. Proctor*, 3 H. & N. 532. See *Churchward v. Coleman*, 2 L. R. 2 Q. B. 18.

[2] This is conferred by 28 & 29 Vic. c. 99, which was passed 5th July and came into operation 1st October, 1865, and was amended by the 30 & 31 Vic. c. 142, which was passed on the 20th August, 1867, and came into operation on the 1st January, 1868. These Acts are henceforth to be cited as the "County Court Acts, 1865 and 1867" respectively.

Under this head, a brief outline of the Acts and Rules has been attempted, for the purpose of giving a general view of the new Equitable Jurisdiction, for which it is hoped this epitome will be found sufficient. For actual practice recourse must be had to the Acts and Rules themselves.

[3] The court is to have all the power and authority of the Court of Chancery in the suits and matters thereinafter mentioned. C. C. Act, 1865, s. 1. The judge is to have the power of a Judge in Chancery, and the Treasurer, Registrar, and High Bailiff are to discharge any duties which an officer of the Court of Chancery can discharge: s. 2. The London City Small Debts Court is to have the same jurisdiction and powers as a Metropolitan County Court, except of appointing officers: s. 4. The jurisdiction of the Stannaries Court is not to be impaired: s. 6. The salary of the present judges is to be increased by 300*l.* a-year, but future judges are not to receive more than 1500*l.* a-year, with retiring allowances in each case: s. 13. The Registrar and High Bailiff are to be remunerated by Court fees, to be settled by the Commissioners of the Treasury: s. 12.

[4] 1. Administration suits by creditors, legatees, devisees, heirs-at-law, or next-of-kin, of estates not exceeding in value 500*l.* 2. Execution of trusts of estates not exceeding 500*l.* 3. Fore-closure or redemption, or the enforcing of mortgages, charges, and liens not exceeding 500*l.* 4. Specific performance of, or for the reforming, delivering up, or cancelling of, an agreement for the sale, purchase, or lease of property, where, in case of a sale or purchase, the purchase money, and in case of a lease the value of the property, does not exceed 500*l.*: s. 9, C. C. A., 1867. 5. Proceedings under the Trustee Relief Acts, or Trustee Acts, including the payment of money into Court, C. C. A., 1867, s. 24, the estates not exceeding 500*l.* 6. Maintenance or advancement of infants out of property not

(D) *What Courts proceedings are to be taken in and removed to, and of Appeals.*[1]

(E) *Of the procedure and practice.*[2]

exceeding 500*l*. 7. Dissolution or winding-up of partnerships, the stock not exceeding 500*l*. 8. Injunctions for granting relief in the preceding cases, s. 1. The judge may order legacies of infants or persons absent beyond seas to be paid into the Court of Chancery, under 36 Geo. 3, c. 52, s. 32, s. 5.

[1] In case of mortgages, in the court of the district where the lands lie: s. 10. Under the Trustee Acts, where the applicants or any of them reside: *id.* For the administration of the assets of a deceased person; where he resided, or his executors or any of them reside; *id.* In partnership cases where the business was or is carried on: *id.* For specific performance, &c., where defendants or any of them reside or carry on business: *id.* In any other matter where the defendants or any of them reside or carry on business. A vice-chancellor may transfer any matter into the Court of Chancery: s. 3. The county court may transfer any matter to another county court: s. 11. The judge of the Court of Chancery may transfer any proceedings attached to his court to the county court in which they might have been commenced, and that either upon or without an application of any party. C. C. Act, 1867, s. 8. The County Court Equitable Jurisdiction Act does not oust the jurisdiction of the Superior Courts of Equity. They retain a concurrent jurisdiction, and it is not obligatory upon a plaintiff to resort to a County Court. *Scotts v. Heritage*, 35 L. J. N. S. C. 12. But if commenced in the Superior Court, they may now be transferred to the County Court under the 8 sect. above cited. In case it should appear that the estate or subject-matter exceeds 500*l*., the court shall direct the proceedings to be transferred to the Court of Chancery, but the vice-chancellor appointed for that purpose by general order (Kindersley, V.C.—now Malins, V.C. —Ord. Cam, 22 Dec., 1865) is empowered to restore them to the county court on the application of either party, and summons to the other party: s. 9. Parties dissatisfied with the determination of the judge on a question of law or equity, or admission or rejection of evidence, but not on the value of the property, may appeal to the vice-chancellor, appointed as aforesaid, whose decision shall be final; notice to be given to the other party within 30 days, and 10*l*. to be deposited as security for costs.

[2] Suits under the 1st, 2nd, 3rd, and 7th clauses before mentioned, and s. 9 of C. C. A. 1867 (amending 4th clause), are commenced by filing a plaint, stating the names and addresses of the parties, the grounds of complaint, and asking for specific relief and general relief. The plaints may be in the forms supplied in the schedule, with variations as the case may require (Order I, rules 1–5). The plaint is to be filed in the county court office, with as many copies as there are defendants, upon which a summons is to be issued by the Registrar forthwith, returnable at least one, and not exceeding three, calendar months from the filing of the plaint, and served by the Bailiff on each defendant with a copy of the plaint, within seven days after the issuing thereof. The service is to be effected in the same manner as the Common Law Summonses, but the court has power in certain cases to allow substituted service: *id.* R. 6–10. The defendant may at any time before the hearing file, in the manner prescribed, an admission of the truth of the plaint, and submit to the judgment of the court; or he may within eight days after the service of the summons file a statement in the nature of a disclaimer or answer; and the judge in awarding costs is directed to consider the fact of his having done so or not. The plaintiff may also, before the cause is set down for hearing, file a notice requiring the cause to be dismissed against all or any of the defendants, with costs, without prejudice to further proceedings; and this notice shall operate as an order of dismissal (Order II).

The evidence of witnesses shall be taken on oath *vivâ voce*, and documents may be admitted, and inspected, and their production and the attendance of witnesses enforced as in ordinary cases. In addition, documents unobjected to may be received without formal proof, and if objected to, the cause may be adjourned for proof at the peril of costs to the objector. Affidavits may be used on certain notice, and distant witnesses examined by the Registrar of the court of the district in which they reside (Order III). The hearing is to be in open court, as in other cases. Upon the hearing the judge may dismiss the suit, or grant relief in whole or in part, direct any questions of fact to be tried by a jury, or make such other order as to the suit or as to costs, as the court shall think fit (Order IV.)

The decree or decretal order is to be carried out by the Registrar, in accordance with the directions comprised in Orders V., VI., VII., VIII., IX., and XX.

In case of a suit becoming abated by death, marriage, &c., the judge may make an order of revisor, or such supplementary order as the case may require (Order X.)

Proceedings under the 5 & 6 clauses are to be by petitions stating all necessary facts, &c., filed seven days before the hearing (Order XI., rules 1 & 5); and the Registrar is to issue notices to be served by the Bailiff on the parties who ought to be served therewith (Rules 6 & 7). Previous notice is to be given of applications for injunctions, except in urgent cases (Order XI).

(F) *Supplementary provisions.*[1]

Persons desiring to pay money, transfer stock, or deposit security in trust to attend the orders of the court under sect. 24 of the C. C. A. 1867, are to file an affidavit setting forth the facts, in the same manner as is required in Chancery, and may pay the money into a Post-office Savings' Bank; and may transfer stock into the names of the Treasurer and Registrar; or if no Treasurer, into the names of the Registrar and Superintendent of the C. C. Department of the Treasury: security to be deposited with the Registrar in the same names.

Persons entitled to the fund may apply by petition to be filed seven days before the hearing, whereof copies are to be served on the trustees and other persons interested. The petition, and also the opposition thereto, are to be supported by affidavit (Order XI.)

Ex parte applications may be made to the judge in or out of court, upon affidavit, to secure the possession of property obtain security, enforce the deposit or payment, into court of money, the sale of goods or chattels, or an order in the nature of an injunction (Order XII.)

The decrees and orders of the court are to be enforced by the service of a copy thereof on the parties to be bound thereby, and by warrants of *fi. fa.* as in ordinary cases, or warrants of possession or assistance as the case may require (Order XVI.)

In an administration suit instituted by legatees in a county court, the costs were ordered to be paid by the plaintiffs:—*Held*, that the costs must be paid out of the general assets of the estate. *Cooper v. Busbridge*, 16 L. T. N. S. 5.—V.-C. S.

In a suit instituted on behalf of infants by their next friend in a county court, the judge, in the absence of the necessary undertaking by the plaintiff to be answerable for costs, dismissed the plaint:—*Held*, that the plaint ought to have been allowed to stand over until the requisite undertaking had been duly signed and annexed to it. *Williams v. Williams*, 16 L. T. N. S. 581.—V.-C. S.

[1] Funds in court may be invested in a Post-office Savings Bank under sec. 26 of the County Court Act, 1867, and the dividends reinvested except otherwise directed and apportioned to the right account. If the account is under 30*l.* in the Post-office Savings Banks a married woman entitled to 200*l.*, or 10*l.* a-year, may be examined apart from her husband, to ascertain whether the same shall be paid to him or settled—if she is an infant, the same must be settled (Order XVII.)

The practice on appeals is regulated by Order XIX. and is similar to that of appeals at common law. The general duties of registrar, high bailiff, and receiver, are prescribed by Orders XX., XXI., and XXII.

Various minute points of practice are provided for by the rules under Order XXIII. The forms contained in the schedule are to be adopted when applicable; and where none are provided, the parties are to frame their own, using as guides the forms in the schedule; the rules, forms, and practice previously in force in the county courts are to be adopted in equity as far as applicable.

Debts are to carry interest, when not otherwise carrying interest, at 4 per cent from the decree, and legacies at 4 per cent from one year from testator's death unless otherwise directed by the will.

Any suit or matter transferred from any county court to the Court of Chancery, under the provisions of sec. 9 of the 28 & 29 Vic. c. 99, shall proceed in the court of Kindersley, V.C.—now Malins, V.C.—Ord. Can. 23 Dec. 1865. 11 Jur. N. S. Part 2, p. 511.

Where a party to a suit in the Court of Chancery has not obeyed an order of that court, although the subject-matter may be under 500*l.*, the judge to whose court the suit is attached will not order a transfer of it to the county court under 30 & 31 Vict. c. 142, s. 8. *Maudesley v. Maudesley*, 18 L. T. N. S. 51.

A plaintiff residing more than twenty miles apart from the defendant filed a bill to foreclose a mortgage for 50*l.* upon which a few pounds interest was due. The court held him entitled to select his tribunal, and considering it doubtful, under the circumstances, that less expense would have been incurred by proceeding in the county court, gave him a decree for foreclosure with the ordinary costs. *Id.*

V. C. appointed as the judge of appeal under the County Courts Equitable Jurisdiction Act, will decline to entertain any question in the nature of an appeal from a decision of a county court judge except upon a case stated, in accordance with the 19th county court order in equity. *Slattery v. Axton*, 14 L. T. N. S. 510, Ch.

Although the subject-matter of a suit is within the jurisdiction of the county court, the court, in the absence of any special reason, will not order the suit to be transferred to the county court. *Picard v. Hine*, 18 L. T. N. S. 705. *Simons v. McAdam*, 6 L. R. Eq. 324; 37 L. J. Ch. 751; 18 L. T. N. S. 678.

Where the judge of a county court has dismissed a bill, on the ground of want of jurisdiction, the court will not interfere on an *ex parte* application. *Cox v. Slater*, 12 Jur. N. S. 542, Ch. on appeal; 14 L. T. N. S. 511.

County court in equity has jurisdiction to decree specific performance of an agreement for a lease, *Wilcox v. Marshall*, 36 L. J. C. 358, and to decree execution of constructive or implied trusts. *Clayton v. Newton*, *id.* 428.

B. advanced 100*l.* to C., upon the security of a deposit of the title-deeds of real estate. C. subsequently became bankrupt, and thereupon B. filed a plaint in the county court to enforce the payment of his money:

XI. As to Admiralty Jurisdiction.[1] *See* Williams and Bruce's Admiralty Practice; Cootes, *id.*; and James on Salvage.

XII. As to the Costs in County Courts.[2] *See* also *ante*, 141.

—*Held*, that the county court had jurisdiction to grant the relief prayed, and having the bankruptcy court and county court to choose from, had a right to go to either. *Medhurst v. Golder*, 16 L. T. N. S. 56.

The question whether certain conversations amount in equity to a contract between the parties to them, is not a mere question of fact, but is one the decision of which by a county court judge may be made the subject of an appeal. *Williams v. Williams*, 37 L. J. Ch. 854.

[1] The 31 & 32 Vic. c. 71 by s. 2, authorises Lord Chancellor to appoint county courts and districts for Admiralty purposes. By s. 3 jurisdiction to apply to claims for *salvage* where property saved not exceeding 1000*l.* or amount claimed not exceeding 300*l.* for *towage, necessaries, or wages;* where amount claimed not exceeding 150*l.* for damage to *cargo, or damage by collision* 150*l.* Parties may agree by memorandum signed by them or their attorney to confer jurisdiction when amount claimed exceeds the said several sums.

By s. 4 county court no jurisdiction in matters of prize or slave trade.

By s. 5 no county court other than that appointed to have jurisdiction.

By s. 6 causes may be transferred from county courts by order of High Court of Admiralty.

Or by s. 7 may be transferred by order of county court to High Court of Admiralty.

By s. 8, transfer of causes may be made to other county courts or court of Admiralty.

S. 9 restricts proceedings in the court of Admiralty or superior court when sum recovered less than what gives jurisdiction to county court.

By ss. 10 & 11 power is given to judge of county court to summon nautical assessors to his assistance.

By s. 12 decrees in county courts in Admiralty causes to have same force as those in civil causes.

And by s. 13 Admiralty causes to be heard at usual courts.

By s. 14 the registrar to appoint assessors in county court.

SS. 15 & 16 relates to attendance of assessors, and their removal.

By ss. 17 & 18 remuneration of registrars and scale of costs to be according to general orders.

By ss. 19 & 20 power is given to registrars to administer oaths and take evidence to be receivable in Admiralty court.

By s. 21 proceedings in an Admiralty cause shall be commenced in the court having Admiralty jurisdiction within the district of which the vessel or property to which the cause relates is at the commencement of the proceedings; or, if rule not applicable, then in the county court having Admiralty jurisdiction in the district of which the owner of the property to which the cause relates, or his agent in England, resides, or if such owner or agent not within any such district, then in the county court having Admiralty jurisdiction nearest to the place where such owner or agent resides.

By s. 22 judge or registrar may order arrest or detention of property if satisfied about to be removed.

By s. 23 power is given to issue process, according to general orders.

By s. 24 registration of decrees and orders to be made.

By s. 25 concurrent jurisdiction of the court of passage at Liverpool is conferred.

By ss. 26 & 27 appeal is given to Court of Admiralty within ten days.

Agreement not to appeal, s. 28.

By s. 29 No appeals to the Queen in Council except by permission of judge, costs of appeal to be paid by unsuccessful appellant, but no appeal unless amount exceeds 50*l.*

By s. 32 sale may be decreed.

By s. 33 in certain cases causes may be transferred by county court, and appeals made to court of Admiralty of the Cinque Ports.

And by s. 34 county court acts applied to this.

SS. 35 & 36 relate to making of general orders. See General Orders, 1869.

[2] By 30 & 31 Vic. c. 42, s. 5, if in any action commenced after passing of this act in any of the superior courts, the plaintiff shall receive a sum not exceeding 20*l.*, if the action is founded on contract, or 10*l.*, if founded on tort, unless the judge certify on the record that there was sufficient reason for bringing such action in the superior court, or unless the court or judge at chambers shall by rule or order allow such costs.

By s. 14, whenever an action or suit is brought in a county court which the court has no jurisdiction to try, the judge shall order the cause to be struck out, and shall, unless the parties consent to the court having jurisdiction to try the same, have power to award costs in the same manner, to the same extent, and recoverable in the same manner, as if the court had jurisdiction in the matter of such complaint, and the plaintiff had not appeared, or had appeared and failed to prove his demand.

By s. 19, scale of costs to be framed by judges, see rules and order 1867.

Sec. 29, where actions unnecessarily brought in any other court than the superior courts of law which could have been brought in a county court, only county court costs to be allowed.

COUNTY Rate.[1] *See* 15 & 16 Vic. c. 81, s. 126; 25 & 26 Vic. c. 103; 29 & 30 *id.* c. 113, s. 13.

By 129th rule, 1867, in all cases where a plaintiff claims a sum exceeding 20*l.*, and recovers a sum not exceeding 20*l.*, but exceeding 5*l.*, the scale upon which the costs shall be taxed shall be in the discretion of the court. See scale of costs and charges in rule and order 1867, and observations upon effect thereof in Davis's Supplement, pp. 61, 62.

An action of contract was commenced and ended between August 1867, and January 1868, and less than 20*l.* recovered. The 30 & 31 Vic. c. 142, received the royal assent in August 1867. Section 5 enacts, that if an action of contract be commenced after the passing of the act in the superior courts, and no more than 20*l.* be recovered, the plaintiff shall not be entitled to costs without a certain certificate or order. Section 36, enacts, that the act shall come into operation on the 1st January next after the passing thereof:—*Held*, that section 5 did not apply. *Wood v. Riley*, 37 L. J. C. P. 24.

Where an action is brought in a superior court involving some matters not within the jurisdiction of the county court, but plaintiff only succeeded in respect of those matters which were within the jurisdiction of the county court, plaintiff will be entitled to his costs, if the case was such as could not practically have been tried in the county court. *Williams v. Jones*, C. P. 15 L. T. 248.

By sect. 14, 30 & 31 Vic. 142, the court may award costs where the cause is struck out for want of jurisdiction; formerly the court had no such power. *Lawford v. Partridge*, 26 L. J. Ex. 147.

By sect. 5 we have seen costs are not recoverable in superior courts where sums not exceeding 20*l.* on contract, or 10*l.* on tort are recovered, unless the judge certify on the record, that there was sufficient reason for bringing such action in superior court, or a judge at chambers by rule or order shall allow such costs; where the plaintiff recovers less than 40*s.* in an action for slander for words (other than words actionable only by reason of *special damage*), no certificate can be given (21 Jac. 1, c. 16). In other actions for torts, if the damages are less than 40*s.*, the plaintiff would require a certificate not only under sec. 5, of the recent Act, but under 3 & 4 Vic. c. 24, that the action was brought to try a right—the 23 & 24 Vic. c. 126, is, in effect, neutralised by sec. 5, of 30 & 31 Vic. A successful defendant, in the superior courts, is always entitled to his costs. In the county courts the judges have an uncontrolled discretion as to allowing or disallowing costs; where no special directions are given, the costs abide the event, and execution issues for them as of right.

Under the Act of 1867, a new scale of costs to be paid to counsel and attorneys has been issued—the one relating to costs and charges, in actions of debt or contract exceeding 20*l.*, the other in actions of tort, where damages *recovered* exceed 20*l.*; there is also a scale in actions under ss. 11 & 12. The better opinion appears to be, that the word *recovered* in the second column of the table must apply to actions of debt or contract as well as to action of tort. *See* Davis, "County Court Act, 1867," p. 59, where the point is fully discussed. The jurisdiction of the county court under the Bills of Exchange Act in cases under 20*l.* has not been taken away by the 19 & 20 Vic. c. 108, s. 4. *Holbrow v. Jones*, 3 L. J. N. 239. The defendant's right to costs as between attorney and client is abolished by the Act of 1867. Where actions are sent to be tried in the county court, under 19 & 20 Vic. c. 108, s. 24, the suit remains in the superior court, and if the plaintiff does not recover more than 20*l.* application for costs must be made to the court or to a judge at chambers. The taxation is according to the county court's scale from the time of removal. *See Wheatcroft v. Foster*, 27 L. J. Q. B. 277, E. B. & E. 737. Of course, special terms as to costs may be introduced into the order, though this is unusual.

On removal of cause under ss. 7 & 10 of 30 & 31 Vic. c. 142, the costs of the parties in respect of the proceedings in the superior courts shall be allowed according to the scale in use in the superior courts. *See* R. 131. As to actions of tort recovered under s. 10, *see* Davis, "County Court Act for 1867," p. 66.

[1] By 15 & 16 Vic. c. 81, s. 51, as to county rates, the word "county" shall include any liberty, franchise, or other place in which rates may be levied, having a separate commission of the peace, and not subject to the jurisdiction of the county at large, nor contributing to the county rates for such county: a borough by prescription is within the definition, and therefore is not liable to be assessed to the rate for the county at large. *East Looe (Mayor, &c.) v. Cornwall (Justices)*, 3 B. & S. 20; 31 L. J. M. C. 245. The exemption of tenants in ancient demesne from parliamentary taxes and tallages is limited to taxes granted by Parliament, and does not extend to local taxation. *Reg. v. Aylesford*, 2 El. & El. 538.

By a charter of James I. the mayor and recorder of a borough were constituted justices of the peace within the borough, but there was not an "intromittent clause," excluding the jurisdiction of the county justices. Up to 1858 the county justices had never made a county rate on the borough, or interfered within its limits:—*Held*, nevertheless, that a county and police rate made by the county justices was good against the borough. *Were v. Clerk of the Peace of Devon*, Q. B., 34 L. J. 47, 4 B. & S. 7.

The 15 & 16 Vic. c. 81, ss. 32, 34, 35, only apply to a borough exempt from contributing to a county rate. *R. v. Overseers of*

COUNTY Treasurer.[1]

COURTS in General.[2]

COURTS-Martial.[3]

COURTS of Equity. *See* County Courts.

COVENANT. 3 Abr. 154. *See* Arbitration; *post*, Deed, Husband and Wife; Infant; Lease; Partners; Principal and Agent.

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I. Of Covenants, their Nature and Qualities.[4]

Huddersfield, 31 L. J. M. C. 131, 1 B & S. 961.

The power of justices under sect. 7 of 15 & 16 Vic. c. 81, to order the attendance of persons and the production of accounts and documents, to enable them to prepare a basis for fair and equal county rates, is not limited by section 5 to overseers of the poor, constables, collectors, &c., but extends to any person capable of giving evidence or of producing accounts or documents touching the value of rateable property. *Reg. v. Doubleday*, 3 Ell. & Ell. 501.

[1] Penalties levied in a borough having no separate Court of Quarter Sessions, are payable to the county treasurer. *Mayor of Reigate v. Hunt*, 3 L. J. N. 55.

[2] Though the crown may by its prerogative establish courts to proceed according to common law, yet it cannot create any new court to administer any other law. *Natal (Bishop) In re*, 3 Moore, P. C. C. N. S 115.

[3] *See* Finlaison on Martial Law, Eyre's case, T. T. 1868, Q. B., and see 38 L. J. Q. B. 113.

[4] The words "covenant" and "condition," when used in an agreement, do not necessarily mean a covenant under seal, or a condition in the strict legal sense of the word, but may, in order to effectuate the intention of the parties, be construed to mean contract or stipulation. *Hayne v. Cummings*, 16 C. B. N. S. 421; 10 L. T. N. S. 341.

A covenant to bequeath a sum of money constitutes a specialty debt against the covenantor's estate, and is not satisfied by the mere insertion of such a bequest in his will. *Graham v. Wickham*, 9 Jur. N. S. 702; 8 L. T. N. S. 679—L. J.

An agreement contained covenants on the part of the contractor as to always having vessels ready for the conveyance of the mails, &c., and it provided for the payment of penalties on failure of the contractor in respect of his duties. Parliament refused to vote funds for payment of the subsidy, and the Board of Admiralty ceased to require the services for carrying the mails:—*Held*, that a covenant on the part of the Board to allow the contractor to carry the mails and to earn the subsidy was not to be implied. *Churchward v. The Queen*, 1 L. R. Q. B. 173.

A proviso for redemption is not equiva-

II. Of the Construction of Particular Covenants.

(A) *Agricultural and other Special Covenants contained in Leases.*[1]

(B) *Not to Assign or Underlet without License.*[2]

(C) *To pay Rates and Taxes.*[3]

(D) *To pay Rent.*[4]

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lent to a covenant to repay mortgage money. *Isaacson v. Howard*, 3 L. J. N. 43.

Where a party covenants to pay money "immediately upon demand," the word "immediately" must receive a reasonable construction, so as to allow the debtor time to procure the money; and if the demand is not made by the creditor himself, to inquire into the authority of the person making it to receive the money. *Toms v. Wilson*, 4 B. & S. 442—E. C.

[1] Meadow land, which has not been broken up during twenty years which immediately preceded the execution of a lease, is, as between the lessor and the lessee, ancient meadow, the breaking up of which during the term amounts to a breach of the lessee's covenant not to commit waste. *Murphy v. Daly*, 13 Ir. Com. Law Rep. 239—Ex. Ch. *Hunter v. Miller*, 9 L. T. N. S. 159—H. L.

An agreement for letting a farm contained a clause that the tenant was "to perform each year for the landlord, at the rate of one day's team work with two horses and a proper driver for every 50*l.* of rent." The landlord gave the tenant notice requiring him to send on a certain day a cart and two horses to a railway station, and perform one day's team work by drawing coal for the landlord's use:—*Held*, that the clause was not restricted to agricultural works. *Marlborough (Duke) v. Oswald*, 9 L. T. N. S. 256—Q. B.

A tenant was under an agreement to pay an additional rent of 10*l.* for every ton, or any less quantity of "hay, straw, or other dry fodder" of the growth of the premises which should be sold off or taken away. At the trial it was proved that he had sold and removed a quantity, something less than a ton, of hay, which he alleged was utterly unfit to be eaten by cattle. The jury found that the hay so sold was "not fit food for cattle," the verdict was entered for the landlord with leave to move:—*Held*, that the verdict was rightly entered. *Field v. Tattersall*, 7 L. T. N. S. 718—Ex.

[2] A lessee who covenants not to assign without the consent of the lessor by executing a deed, under sect. 192 of the 24 & 25 Vic. c. 134, assigning all his property to trustees for the benefit of his creditors, forfeits the lease. *Holland v Cole*, 1 H. & C. 67. But where a lease contained a covenant not to assign without license, with a proviso for re-entry on breach, and the lessee became bankrupt, and the assignees assigned to the defendant, who contracted to sell the term to the plaintiff;—*Held*, that the defendant was bound to obtain the landlord's license, as the assignment by the assignees was no breach of the covenant. *Winter v. Dumerque*, 12 Jur. N. S. 726. *Bailey v. De Crespigny*, 3 L. J. N. 119.

Assignment without license contrary to covenant not to assign, creates no rights or relationship of landlord and tenant. *Elliott v. Johnson*, 36 L. J. Q. B. 44. See *Saunders v. Merryweather*, 35 L. J. Ex. 115. Covenant not to assign runs with the land. *Williams v. Earle*, 37 L. J. Q. B. 231.

An assignment without consent signified by execution or indorsement does not pass the estate of the lessee to the assignee. *Butler v. Smith*, 16 Ir. Com. Law Rep. 213.

The measure of damages for assigning or under-letting without a license, is such a sum as will put the lessor in the same position as if he had still the lessee's liability, instead of the liability of another, for breaches both past and future. *Williams v. Earle*, 3 L. R. Q. B. 739; 37 L. J. Q. B. 231.

[3] By a covenant in a lease at rack rent the tenant covenanted "to pay and discharge all taxes, rates, assessments, and impositions whatsoever (except property or income-tax, in respect of the said rent), which should, during the term, become payable." Under a local act, trustees were empowered to require the owners of houses adjoining the streets to sewer, drain, level, &c., the said streets, and if they failed to do it they were empowered to do it themselves, and to charge the *owners*, and to recover in an action of debt:—*Held*, that expenses incurred under the Act were not "taxes, rates, assessments, or impositions" within the covenant. *Tidswell v. Whitworth*, 36 L. J. 103, 2 C. P.

When a covenant to pay all taxes and assessments is imposed on premises, the tenant must pay his proportion for paving, under the Metropolitan Management Acts. *Thompson v. Lapworth*, 37 L. J. C. P. 74.

An agreement with a landlord to repair, the expense of cleansing ornamental water is included in words "rates, taxes, tithes, and other charges payable in respect of the premises," and also the expense of removal of a nuisance. *Bird v. Elwes*, 37 L. J. Ex. 91; 18 L. T. 727.

[4] A lessee of mines of ironstone, coals, and other minerals, demised the same, in November, 1846, to the defendant for twenty-three years, reserving a royalty upon the ore, &c., raised by him, or an annual sum in lieu thereof, with power to the lessee to distrain for the rents, reservations, &c. The lessee, during the demise, assigned to the plaintiff "the rents, reservations, and

(E) *To Repair, Build, and Rebuild.*[1]

(F) *For Title.*[2] *See* vol. i. p 63.

(G) *Good Right.*[3]

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all his other the estate, in respect of the demised premises, and the benefit of the covenants in the lease contained." In an action by the plaintiff to recover arrears in lieu of royalties accrued since the assignment:—*Held*, that, by the deed of the lessee in 1846, a rent was created, and not a mere covenant in gross; that such rent was assignable, and that the plaintiff, as assignee, could sue the defendant for such rent. *Williams v. Hayward*, 1 El. & El. 1040.

[1] In an action against a tenant for not leaving premises in repair, evidence as to a prior promise on the part of the lessor to put them in repair is not admissible; but the jury may measure the extent of the repairs to be done by the age and class of the premises. *Haldane v. Newcomb*, 9 L. T. N. S. 420.

The word "rebuild" does not involve the obligation of rebuilding not only on the same site, but in the same manner, style, and shape, and with the same elevation as the old building. *Low v. Innes*, 10 Jur. N. S. 1037; 11 L. T. N. S. 217—C. *Bargent v. Thompson*, 9 Jur. 1192.

Under a covenant to repair generally and to repair within three months after notice. The giving notice is not a waiver of the forfeiture under the general covenant. *Jew v. Perkins*, 37 L. J. Ex. 54.

A. was lessee of a building, the reversion being in B. The lease contained the usual covenant to yield up in repair at the expiration of the term. During the lease, B. entered into a parol agreement with M. & Son to grant them a lease at the expiration of A.'s lease, M. & Son agreeing to pull down the building, and rebuild it. In an action by B. against A. for not yielding up the premises in repair:—*Held*, that B. was entitled to substantial damages. *Rawlings v. Morgan*, 18 C. B. N. S. 776; 11 Jur. N. S. 564; 34 L. J. C. P. 185.

As to premises to be built, see *Berkley v. Shafto*, 15 C. B. N. S. 79.

The owner of building ground upon which houses of uniform height and depth had been built, sold it in plots, and conveyed each plot in fee, subject to a perpetual rent-charge; and each purchaser covenanted with the grantor that there should be no trees nor any building whatever in the garden that should exceed the level of the parlour floor:—*Held*, that it was a breach of the covenant to erect any building above the prescribed height extending beyond the back of the house, though the ground upon which such building was erected had never been used as a garden, and that a person entitled to complain of such breach of covenant had not waived his right by a passive acquiescence in other breaches, and that the owner of one plot was entitled to maintain a suit for breach of covenant against the owner of another plot, without making the other owners parties. *Western v. M'Dermot*, 34 L. J. C. 76.

A lease of three dwelling-houses and a field, for 99 years, contained a covenant on the lessee's part, "well and sufficiently to repair, sustain, and keep the said tenements, field, and premises, as well in houses, buildings, walls, hedges, ditches, fences and gates" during the said term; with a proviso for re-entry for breach of covenant; sub-lessees of the field erected houses therein, and some of these being out of repair, the lessor brought ejectment:—*Held*, that the covenant did not extend to the newly-built houses. *Cornish v. Cleife*, 34 L. J. Ex. 19.

Defendant, a tenant, liable on his covenant to repair, gave up possession at the end of the term, the buildings being out of repair. The reversioner had entered into a parol agreement with a third person (M.) for a lease to commence from the expiration of defendant's lease, to pull down the existing buildings, and build much larger:—*Held*, that the judge was not bound to direct the jury to find for nominal damages only. And semble, had the agreement with M. been in writing, the case would have been the same. *Rawlings v. Morgan*, C. P. 34; L. J N. S. 185.

[2] A contract for sale of all his interest by a lessee: does not amount to a contract for lessor's title. *Tweed v. Mills*; 1 L. R. C. P. 39.

Where the Court of Chancery ordered certain lands included in a term, to be sold, to raise portions, but the tenant for life considering it more advantageous to sell the fee, procured the trustees of the settlement to concur in the sale under a power. *Held*, the tenant for life was bound to covenant for title, this not being a sale under the court. *Earl Paulett v. Hood*, 5 L. R. Eq. 115; 37 L. J. 224.

[3] In 1861 A. conveyed to B. a messuage, "together with all lights, easements, &c. belonging or appertaining, or usually enjoyed therewith;" and covenanted, "that, notwithstanding any act, or thing done, or permitted by him, he had good right and absolute authority to convey." In 1842, A., by an agreement in writing with the owners of an adjoining tenement, acknowledging that certain windows erected upon the messuage were an encroachment upon the adjoining tenement, and agreed with the owners to pay to them in respect of the windows, &c., 5*s.* per annum so long as he should continue to use them; and the owners of the adjoining tenement should consent thereto and,—*Held*, that A. had never acquired any easement in the windows, &c., and that, therefore, the agreement with the

(H) *Quiet Enjoyment.*[1]

(I) *Not to carry on certain Trades.*[2]

(K) *Covenant not to sue.*[3]

III. Of Covenants in Regard to the Parties; and herein of Covenants running with the Land.[4]

IV. Remedies for breach of Covenant.[5]

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owners of the adjoining tenement was not a breach of the covenant. *Thackeray v. Wood*, 33 L. J. Q. B. 275: 10 L. T. N. S. 645.

[1] In a contract for a demise, a promise of quiet enjoyment during the term is implied by law. *Hall v. City of London Brewery Company*, 2 B. & S. 737; 9 Jur. N. S. 18.

A declaration for breach of a covenant or contract for quiet enjoyment must allege an eviction by a person claiming title paramount. *Id. Penford v. Abbott*, 9 Jur. N. S. 517; 32 L. J. Q. B. 67. *Hales v. Cox. In re Hales*, 9 Jur. N. S. 1305; 11 W. R. 331, R. *Lock v. Furze*, Ex. Ch. 35 L. J. C. P. 141.

[2] Using premises for depositing large quantities of lucifer-matches, whereby the premises are rendered so dangerous as to be uninsurable against fire, is not a breach of a covenant not to carry on any noisome or offensive trade, the word "dangerous" not being in the covenant. *Hickman v. Isaacs*, 4 L. T. N. S. 285, Q. B.

A sub-lessee of a house, whose immediate lessor is bound by covenant not to carry on a particular trade, will be restrained from carrying on such trade, although he took his lease without notice of the covenant. *Parker v. Whyte*, 1 H. & M. 167; 32 L. J. Ch. 520. A person, by taking out an Excise license for the sale of beer not to be drunk on the premises, does not break a covenant not to use his house as a public-house for the sale of beer. *Pease v. Coates*, 36 L. J. Ch. 57. 1 L. R. 688 Eq.

A covenant by a purchaser of land not naming assigns that no building on the land should be used for the sale of beer: does not run with the land.

An incoming tenant from year to year was told that the house could not be used as a butcher's shop: *Held*, sufficient to affect him with notice of a covenant against its use for the sale of beer, and injunction granted accordingly. *Wilson v. Hart*, 2 H. & M. 551. [Affirmed on appeal.] 1 Law Rep. Ch. App. 463; 35 L. J. 569, Ch.; 12 Jur. (N. S.) 460.

[3] Although a covenant not to sue for a limited time cannot be pleaded in bar, though it may if broken be the subject of a cross-action, yet if there be a provision that during that time the deed may be pleaded in bar, such a covenant may be pleaded in bar. A covenant not to sue was held to bind non-executing creditors under 24 & 25 Vic. c. 134, s. 192. *Walker v. Nevill*, Ex. 3 H. & C. 403; 34 L. J. Ex. 73.

[4] Three licensees of a right to dig minerals, jointly and severally covenanted with the grantor of the license to pay him compensation for injury to surface. Two of them assigned their right under the license: —*Held*, that the covenant ran with the land, so as to bind the assignee. *Norval v. Pascoe*, 10 Jur. N. S. 792; 10 L. T. N. S. 809—V.-C.-K.

A covenant to use a house as a private dwelling-house only, runs with the land, though the word assigns be not used. *Wilkinson v. Rogers*, 10 Jur. N. S. 5.; *see Richards v. Harper*, 4 H. & C. 55; 1 Law Rep. Ex. 199; 35 L. J. 130 Ex.; *Gorton v Gregory*, 3 B. &. S. 90—Ex. Ch. *See* 4 L. J. N. 145.

A covenant against committing any offence against the present or future game-laws does not run with the law. *Stevens v. Copp*, 3 L. J. N. 261; 19 L. T. 454.

The Queen's Bench in *Williams v. Earle* decided that after a lessor who has a covenant against assignment in his lease has given permission to the lessee, he may sue the assignee for making a re-assignment. 3 L. R. Q. B. 739; 37 L. J. 231.

C. demised to defendant, for a term of years, the exclusive right and license to shoot, kill, and take game upon certain of his lands, together with the use of a cottage for the occupation of a keeper. Plaintiff having brought an action against defendant in respect of a breach of covenant to leave the estate well stocked with game:—*Held*, that the demise was of an incorporeal hereditament; that the covenant was one which would pass to the assignee of the reversion. *Hooper v. Clark*, 37 L. J. Q. B. 78; 2 Q. B. 200.

Lease for fourteen years purporting to be by tenant for life and reversioner, so far only as they legally could or might, was executed only by the tenant for life. The lessee entered into possession. On demurrer to an action by the tenant for life on a covenant entered into with him by the lessee:—*Held*, there was a sufficient consideration to support the action. *How v. Greek*, 34 L. J. Ex. 4.

[5] Covenantee is entitled to be indemnified against loss actually sustained. *Lock v. Jurye*, 34 L. J. C. P. 201; *id.* 35, p. 141. Where a testator gave, on the death of his granddaughter a legacy of 400*l.* to her child or children, to be paid at their respective ages of twenty-one, and he charged the legacy on his residuary real and personal estate. The plaintiff, who was entitled under the will to a moiety of the real estate, effected a partition with the person entitled to the other moiety, and each covenanted with the other to pay

CREDIT, Letters of.[1]

CROSSED Cheques. *See* Bankers.

CROWN.[2] 3 Abr. 527. As to the private estates of, *see* 25 & 26 Vic. c. 37.

CUSTOM.[3] 3 Abr. 532.

a moiety of the legacy. The testator's granddaughter had only one child who died under twenty-one. In his lifetime the plaintiff sold his part of the real estate to the defendant, who covenanted with the plaintiff to pay him a moiety of the legacy, and also to save harmless and keep indemnified the plaintiff against all liability consequent on the non-payment of it. The personal representative of the legatee instituted a suit in chancery to recover the legacy, when it was held that on the death of the legatee it ceased to be a charge on the testator's real estate. The plaintiff having brought an action against the defendant on his covenant to pay a moiety of the legacy:—*Held*, that the plaintiff was entitled to recover 200*l*., and not merely nominal damages. *Hodgson v. Wood*, 2 H. & C. 649; 10 Jur. N. S. 591; 33 L. J. Ex. 76; 11 L. T. N. S. 180.

By a deed of even date with a lease, the lessor covenanted that the lessee should retain part of each year's rent until satisfaction of a debt due from the lessor to the lessee:—*Held*, that though the covenant might be pleaded at law as a release *pro tanto* of the rent, this was only to avoid circuity of action, and the covenant was not for all purposes a release. *Ledger v. Stanton*, 2 Johns. & H. 687.

An incumbrancer on land, broke his covenant which he had made with the plaintiff, a speculator, to join in a conveyance to A., with a view to a project by which the plaintiff was to realise the value of the land, as building land, with profit to himself:—*Held*, that he was only liable in damages for the expenses of preparing the deed of conveyance. Per Martin, B. He was liable, in addition, for the loss of profit to the plaintiff. *Duckworth v. Ewart*, 2 H. & C. 129; 10 Jur. N. S. 214; 33 L. J. Exch. 24.

A covenant by a lessor to put the demised premises in repair is a covenant which can only be once broken, and where the lessee has recovered damages in an action upon that covenant, he cannot afterwards sue the lessor, his assignee, or his executor. But the liability of the lessee's covenant to keep in repair does not arise until the lessor's covenant to repair has been fulfilled. *Coward, v. Gregory* 2 L. R. C. P. 153; 36 L. J. 1.

[1] Where circular letters of credit are lost, there is no legal obligation upon the bank that issued them to refund the amount upon return of the letter of indication. Semble, upon an application under 17 & 18 Vic. c. 125, s. 87, before trial the court might order that the loss of the instruments should not be set up, provided an indemnity was given to the satisfaction of the court, &c. *Conflans Quarry Company v. Parker*, 3 L. R. C. P.; 37 L. J. 51; 17 L. T. 283.

Where a bank issued a letter of credit, under which their agent abroad was authorised to accept bills against bills of lading, and the bank stopped payment before any bill was presented for acceptance, and, in fact, no such bill was presented:—*Held*, in the winding-up that the holder of the letter of credit had no claim for damages, there having been no breach or repudiation of contract. *In re Agra and Masterman's Bank, ex parte Tondeur*, 5 L. R. 5 Eq. 160; 37 L. J. 121.

[2] Every royal residence is exempt from the execution of civil process within it, whether the sovereign is actually present in it, or has left it with the intention of resuming residence. *Att.-Gen. v. Dakin*, 16 L. T. N. S. 523, 36 L. J. Exch. 157, 2 L. R. Exch. 290.

The Crown where not made expressly liable by local public acts is exempt from the local burdens. *Lord Advocate v. Barbour*, 5 Sc. Sess. Cass. 3rd series. 84.

Under the acts of the colony of Victoria, where a license is granted, for pastoral purposes, for one year only, tenancy at sufferance is created, by continuance in possession and payment of rent. *Regina v. Dallimore*, 1 L. R. C. P.

A grant made by the crown to the inhabitants of a parish is good, though such grant cannot be made by private individuals. *Willingdale v. Maitland*. 12 Jur. N. S. 932, 36 L. J. Chanc. 64; 1 L. R. 3 Ex. 103, 36 L. J. 64.

The proper remedy for an unauthorised possession of lands of the Crown in the colony is by an information in Chancery, or writ of intrusion *Reg. v. Hughes*, 1 L. R. P. C. 11, 14 L. T. N. S. 808.

In a cause of damage, arising out of collision, instituted on behalf of the Queen, and on behalf of the commander and crew, her Majesty's vessel was found to blame:—*Held*. that 18 & 19 Vic. c 90, authorising costs to be given against the Crown, applies only to suits to which the Attorney-General or the Lord-Advocate is a party. *Leda, The*, 9 Jur. N. S. 208, 32 L. J. Adm. 58.

[3] A custom to be valid must be *as of right*, therefore a custom to obtain from a corporation in which an oyster-fishery was vested "*leave and license*" to fish, not being shown to have existed from the reign of Richard I., will not be presumed to have had a legal origin. *Mills v. Mayor, &c., of Colchester*, 2 L. R. C. P. 476, 36 L. J. 210, 16 L. T. 626. It was no objection to the custom, if otherwise good, that the fee alleged to have been

CUSTOMS and Excise.[1] 3 Abr. 532. *See* 25 Vic. c. 22; 25 & 26 *id.* c. 38; *id.* 84, 26 & 27 *id.* 102.

D.

DAMAGES. 3 Ab. 546.

I. What, and when Recoverable, and Measure of Generally, p. 162.

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paid for the licenses was not a fixed fee, but a fee of reasonable amount. *Id.*

A custom for the freemen and citizens of a town, on a particular day in the year, to enter upon a close, for the purpose of holding horse-racing thereon, is a good custom, and, in pleading it, it is not necessary to aver that the particular day was a seasonable time. *Mounsey v. Ismay*, 1 H. & C. 729, 9 Jur. N. S. 306, 32 L. J. Exch. 94; 7 L. T. N. S. 717; 3 H & C. 486. But pleas alleging the right to go and witness the races, as a customary right in all the Queen's subjects, or as a customary right in all her subjects with certain specified exceptions, are bad. *Coventry (Earl) v. Willes*, 9 L. T. N. S. 384, Q. B.

To an action for entering land of the plaintiff, part of the seashore, between high and low water-mark, in or adjoining the township of O——, and taking gravel, stones, &c., the defendant pleaded setting up a right in the inhabitants of the township of O——, to take the gravel, &c., to be used on their land; or for the necessary repairs of the highways in the township, as a prescriptive right under a thirty or sixty years' user respectively; or claiming to exercise the right as parish officer, for the repair of the highways:—*Held*, that the pleas were bad; for that, so far as they were capable of being construed as justifying under a custom, such custom would be void, being a claim of a profit *a prendre in alieno solo;* if the claim were founded on prescription, it would be equally bad, inasmuch as it was a claim by persons who, not being a corporation, were incapable of taking by grant, and not being claimed in a que estate. *Constable v. Nicholson*, 14 C. B. N. S. 230, 32 L. J. C. P. 240; *see Blacket v. Bradley*, 31 L. J. Q. B. 65, 1 B. & S. 940.

A custom claimed in favour of the inhabitants of one place to exercise certain rights over land situated in another place is bad in law. *Sowerby v. Coleman*, 37 L. J. Exch. 57, 2 L. R. Exch. 96.

Evidence of a custom at Liverpool in the wool trade, for brokers to give their own names or the names of the principal, is admissible. *Cropper v. Cooke*, 3 L. J. N. 48; but *see Curtis v. Peek*, 13 W. R. 230, Exch. Cham.

Where a parish consists of several townships, a separation of one does not affect a particular custom as to the remaining townships. *Bremner v. Hull*, 35 L. J. C. P. 332, 1 L. R. C. P. 748, 12 Jur. 648.

Customary fees may be defeated by showing that, according to the comparative value of money in Richard I.'s time, they could not have been exacted. *Bryant v. Foot*, 37 L. J. Q. B. 65.

In customary freeholds the freehold of the soil is in the lord, so that, in the absence of custom, the tenants have no right to dig coal. *The Duke of Portland v. Hill*, 35 L. J. 439, Ch., 12 Jur. N. S. 286.

Rights in gross are not within the 2 & 3 Will. 4, c. 71. *Shuttleworth v. Le Fleming*, 19 C. B. N. S. 687, 11 Jur. N. S. 840, 34 L. J. C. P. 309.

A custom of a local court of justice, which, as alleged, would in effect extend its jurisdiction practically without limit as to locality, is repugnant to the idea of a local court, and therefore bad. *Cox v. the Mayor, &c. of London*, 32 L. J. Ex. 64.

[1] The Court of Exchequer has no power under the 22 & 23 Vic. c. 21, s. 26, to make rules giving an appeal to the Exch. Ch. in revenue cases, similar to those given by ss. 34 & 35 of Common Law Procedure Act, 1854. *Atty.-Gen. v. Sillem (The Alexandra)*, 10 Jur. N. S. 446; 33 L. J. Exch. 299; 2 H. & C. 581; 10 Jur. N. S. 393.

Importing goods of one denomination concealed in those of another is an offence under s. 6 of 22 & 23 Vic. c. 37. *Budenburg v. Roberts*, 35 L. J. M. C. 235; 1 L. R. C. P. 575. To subject a person to the penalty it is not necessary that the concealed goods should be liable to a customs duty.

A magistrate has jurisdiction to impose the penalty of 100*l.* on every person found on board any ship or boat liable to forfeiture for having on board any of the articles prohibited; although the ship or boat may not have been condemned as forfeited. The magistrate is to inquire whether the ship or boat *was liable to forfeiture. Wheale v. Brown*, Hurl & Colt. 705.

II. Remoteness, p. 163.

III. Granting a New Trial, and interference of Courts in Relation thereto, p. *id.*

IV. Nominal Damages, p. 164.

I. What, and when Recoverable, and Measure of generally.[1]

[1] The ordinary rule which governs sales of real property, that if the vendor fails to make a good title the purchaser is only entitled to recover the amount of his deposit and the expenses to which he has been put, does not apply to the case of a lease granted by a lessor in excess of his leasing powers, and unable to make a title. *Lock v. Loewy*, 1 L. R. C. P. 441; 35 L. J. C. P. 141; 19 C. B. 96. *Sikes v. Wild*, 32 L. J. Q. B. 375; 8 L. T. N. S. 642 Exch. Ch.; and where vendor having the power of transferring property makes default in delivering possession, loss of profit on re-sale may be recovered. *Engell v. Fitch*, 37 L. J. Q. B. 145; 3 L. R. 314.

To ascertain what are the damages payable on a breach of contract, it is to be determined by what is the object of the contract contemplated by the parties. *Duckworth v. Ewart*, 9 L. T. N. S. 297, Ex. *Brady v. Oastler*, 33 L. J. Ex. 300. *See* 3 L. R. C. P. 499.

The case of *Hadley v. Baxendale*, 9 Ex. 179; 23 Law J. Rep. Ex. 341, while deciding that damages not in the contemplation of the parties cannot be recovered, leaves the defendant liable to fair and reasonable damages. *Semble*, that the rule laid down in *Hadley v. Baxendale*, is too strict, and that *Smeed v. Foord* (1 El. & El. 614) and *Gee v. Lancashire and Yorkshire Railway Company* (6 H. & N. 221) contain sounder expositions of the law as to proximateness or remoteness of damage. *Id. See Wilson v. The Newport Dock Co.* 35 L. J. Ex. 97. *Cory v. Thames Iron Docks*, 37 L. J. Q. B. 63.

The measure of damages for the non-delivery of goods, paid for at the time of purchase, is the difference between that price and the highest price the goods have attained up to the time of trial. *Elliot v. Hughes*, 3 F. & F. 387. *Williams v. Reynolds*, 6 B. & S. 495.

In an action of tort, the damage must be the direct result of the wrongful act, and in an action for a wrongful and forcible removal of a person who leaves an article of value behind in a carriage, which he does not ask for or attempt to remove, and which is lost, the value of the article is not recoverable as damages. *Glover v. London and South-Western Railway Company*, 17 L. T. N. S. 139; 3 L. R. Q. B. 25; 37 L. J. 57.

In an action of trespass for taking possession of the plaintiff's land,—*Held*, that he could not recover costs incurred by him in preparing a bill in equity for an injunction. *Abthorp v. Bedford and Cambridge Railway Company*, 8 L. T. N. S. 200, Q. B.

Damages for breach of contract are not within a composition deed under Act of 1861, in the absence of an express provision, *ex parte Wilmot*, 36 L. J. B. C. 17.

Defendants, warranting themselves as agents of L. & Co., sold to the plaintiff, on behalf of L. & Co., certain cargoes of wool, which were to arrive in England in January. L. & Co. having repudiated the contract, the plaintiff filed a bill in Chancery against them for specific performance, which was dismissed with costs. He afterwards brought an action against the defendants for their breach of warranty:—*Held*, that the measure of damages should include, first, the difference between the contract price of the wool, and the value of wool of similar quality at the time and place where the wool would have been delivered had the contract been binding; and, secondly, the costs of the Chancery suit, taxed as between attorney and client. *Hughes v. Graeme*, 33 L. J. Q. B. 335. *See* 37 L. J. C. P. 235. *Id.* Q. B. 68; 3 L. R. C. P. 49.

After breach of a written agreement to deliver goods, the buyer, at the seller's request, waited several months before buying goods in place of those contracted for:—*Held*, that the true measure of damages was the difference between the contract price and the price of the substituted goods, though this price was greater than that of such goods when the contract was first broken; and that there had been no variation of the contract so as to bring the case within the Statute of Frauds, as the buyer appeared to have given time without binding himself to give it. *Ogle v. Earl Vane*, 36 L. J. Q. B. 175, 37. *Id.* 77–3 L. R. 272.

In consequence of a railway embankment, the flood waters of a river were pent back and flowed over land of the plaintiff, doing injury to a certain amount; had the embankment not been constructed, the waters would have flowed a different way, but would have reached the plaintiff's land, and would have done damage to a lesser amount:—*Held*, that the measure of damages recoverable by the plaintiff against the railway company, was the difference only between the two amounts. *Workman v. Great Northern Railway Company*, 32 L. J. Q. B. 279.

A deed by which a debtor assigned a policy of insurance on his life for 1000*l.* to

II. Remoteness of.[1]

III. Granting a New Trial and interference of Courts in Relation thereto.[2]

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trustees or his creditors, contained a covenant that he would not do any act or thing by which the policy should be forfeited. In an action for a breach of covenant in that, the debtor went beyond the limits of Europe without license from the directors:—*Held*, that the measure of damages was the present value of the policy to be assessed by an actuary, taking into consideration the fact that the debtor had covenanted to pay, and should pay the premiums on the policy. *Haxkins v. Coulthurst*, 5 B. & S. 343.

A defendant had obtained a judgment in a county court against the plaintiff. At the time the judgment was obtained he had in his possession goods belonging to the plaintiff, which he had no right to retain. After judgment in the county court, the plaintiff demanded his goods, which the defendant refused to deliver up. After the demand, the defendant issued execution on the judgment in the county court, seized, and sold the goods in his possession, and applied the proceeds in satisfaction of the debt:—*Held*, that the plaintiff was entitled to recover, in an action for conversion, the full value of the goods, and that the jury ought not to take into consideration, in mitigation of damages, the fact that the goods had been subsequently applied in satisfaction of the plaintiff's debt to the defendant. *Edmondson v. Nuttall*, 34 L. J. C. P. 102.

Where, on an agreement for sale of a house, it was stated that as earnest the purchaser had paid to the vendor the sum of 50*l.* to be allowed in payment on completion, but to be returned if vendor should not fulfil the agreement, "and if the said purchaser should fail to perform his part of the agreement, the deposit money shall become forfeited in part of the following damages;" and if either party should refuse to perform any part of the agreement, such party should pay to the other of them "the sum of 50*l.*, hereby mutually agreed upon to be the damages ascertained and fixed on breach hereof," the purchaser refused to complete:—*Held*, that the 50*l.* was liquidated damages, and not penalty, and that vendor was entitled to recover, the purchaser not having paid his deposit, but given an I. O. U. *Hinton v. Sparkes*, 3 L. R. 3 C. P. 161, 37 L. J. 81, 17 L. T. 600.

[1] Defendant sold a cow to plaintiff, which he knew to be infected with a contagious disease, on the false representation that she was free from disease, and plaintiff accordingly put the cow in a shed with other cows of his, which were thereby infected with the disease and died:—*Held*, that in an action against defendant for fraudulently representing the cow to be free from disease, plaintiff was entitled to recover, in addition to the purchase money he had paid, the value of the other cows he had lost by reason of their becoming so infected, such damage being the natural consequence of plaintiff acting on defendant's representation as if it had been true. *Mullett v. Mason*, 35 L. J. C. P. 299; 1 Law Rep. C. P. 559; 12 Jur. N. S. 547; 14 L. T. N. S. 558. *Wilson v. Newport Dock Co.*, 35 L. T. Ex. 97. *Boyd v. Fitt*, 14 Ir. Com. Law Rep. 43, Ex.

[2] Although there is no inexorable rule of practice that the court will not grant a new trial on the ground of the smallness of the damages given, unless there has been some mistake in point of law on the part of the presiding judge, or in the calculation of figures by the jury, yet it will seldom be departed from, except where the jury have failed to really consider the quantity of damages. The rule abided by in an action for libel (dissentiente Shee, J.), although all the judges thought there was a case for substantial damages. *Kelly v. Sherlock*, 1 L. R. Q. B. 686; 35 L. J. 209.

A plaintiff in an action of trespass claimed substantial damages from defendants for pulling down a wall, and the defendants tendered in evidence a conveyance to them, to show that they *bonâ fide* believed that the wall was theirs, but the judge refused to admit it. *Semble*, per Erle, C. J., that it ought to have been admitted, in reduction of damages. *Skull v. Glenister*, 33 L. J. C. P. 185.

In an action by a principal against his agent in a particular branch for abandoning his agency, the jury having given damages for losses sustained by the principal in collateral branches of his business, by reason of the injury done to his credit by the agent's abandonment of his agency, the court refused to interfere with the verdict, or to consider the damage too remote. *Boyd v. Fitt*, 14 Ir. Com. Law. Rep. 43; 11 L. T. N. S. 280—Exch.

Libels of a gross and offensive character, respecting the antecedents and demeanour of the plaintiff as a clergyman, were published in the defendant's newspaper. In the action brought on account of these libels, no justification was pleaded. At the trial no special damage was proved. and it was shown that after the publication of articles offensive to the plaintiff which were in evidence before the jury, but before publication of the more serious libels, the plaintiff, in a letter addressed to the editor of another newspaper, had spoken of the defendant's paper as "the dregs of provincial journalism," and in a sermon preached and circulated by him, before action brought, charged some of his opponents with subornation of perjury. The jury found for the plaintiff, with one farthing damages:—*Held*, by the majority of the court that there were circumstances which might have led a jury to the conclusion that the plaintiff was not entitled to sub-

IV. Nominal Damages.[1]

DANCING. 3 Ab. 553. *See* Theatre.

DEATH.[2] 3 Ab. 535. *See* Murder; Negligence.

DEBENTURES.[3]

DECEIT.[4] 3 Ab. 560. *See* Damages; Joint-Stock Company; Horses; Warranty; Master and Servant.

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stantial compensation, and that a new trial was necessary to prevent a failure of justice. *Kelly v Sherlock*, Q. B. 35 L. J. 209; 1 L. R. Ex. 177.

[1] A., as a security for the repayment of a loan from B., deposited with B. brandy lying in a dock, by delivering to him the dock-warrant, and authorised him to sell if the loan were not repaid on the 29th January. B. sold the brandy on the 28th, and on the 29th handed over the dock-warrant to the purchaser, who on the 30th took actual possession. The loan was never repaid. In an action by the assignee under the bankruptcy of A. against B. for the conversion of the brandy:—*Held*, that the wrongful sale on the 28th, followed on the 29th by the delivery of the dock-warrant in pursuance thereof, was a conversion; and that in measuring the damages, the interest of the defendant in the goods at the time of the conversion was to be taken into account, and that the amount was not the value of the goods, but the amount of the loss the plaintiff had actually sustained, which was nominal, as the plaintiff had no intention of redeeming the pledge. *Johnson v. Stear*, 9 L. T. N. S. 538, C. P.; 33 L. J. 130.

[2] When a person has not been heard of for seven years, the presumption of law is that he is dead, but there is no presumption when he died; and he must be taken to have lived to the end of the seven years. *Dunn v. Snowden*, 2 Drew. & Sm. 201; 32 L. J. C. P. 104. *Thomas v. Thomas*, 13 W. R. 225; 11 L. T. N. S. 47. *Lakin v. Lakin*, 34 Beav. 443. And where a person who was last heard of in 1854 would have been entitled to a legacy had he survived a testator who died in 1860:—*Held*, his personal representative was entitled to the legacy, the next of kin of the testator not proving that he had died before the testator. *In re Benham's Trust*, 1 L. R. 4 Eq. 416; 36 L. J. 502. Two persons (mother and daughter) died under circumstances which rendered it doubtful which of the two was the survivor. The mother was entitled absolutely to a fund which was claimed by those who were her next of kin, exclusively of the daughter:—*Held*, that the *onus probandi* lay on those asserting a nearer kinship; and that, in the absence of evidence that the daughter survived, the claimants were entitled. *Greene, In re*, 1 L. R. Eq. 288; 35 L. J. Ch. 252; 13 L. T. N. S. 541. *Lakin v. Lakin*, 34 Beav. 443.

[3] Railway debentures, in this form as signing "the undertaking," and all the tolls, and sums of money arising upon or out of the said undertaking, and all the estate, title, and interest of the company in the same, to secure the repayment of principal money and interest, only entitles the debenture holders to the produce or earnings of the undertaking as a going concern, the parliamentary powers of management over which cannot be interfered with; the debenture holders have therefore only a right to a receiver over the earnings, and cannot seize the rolling stock of the company, or interfere with the working of the line. *Gardner v. London, Chatham, &c.* 2 L. J. L. R. Ch. 201.

[4] In an action for fraudulently representing that W. was trustworthy, A. the defendant's shopman, who was conversant with the transaction between the plaintiff and W., was called, to prove that at the time of the representation he believed W. to be trustworthy; and as to W.'s general reputation for solvency, two or three tradesmen proved that, in their belief, W. was trustworthy at the time in question:—*Held*, that the evidence was admissible. *Sheen v. Bumpstead*, 2 H. & C. 193; 10 Jur. N. S. 242; 32 L. J. Ex. 271; 8 L. T. 832. *Cawan v. Lascelles*, 3 F. & F. 631.

A statement true to the letter, but in substance a misrepresentation, put forward to mislead the public, is sufficient ground for cancelling an allotment to a person who had applied for shares on the faith of such statement. *Ross v. Estates Investment Society (Lim.)*, 36 L. J. Ch. 54. See *Collins v. Cave*, 30 *id.*, Ex. 55; 4 H. & N. 131.

Action for false and fraudulent representations. Plaintiff, on the representation of defendant that the business of a publican carried on by him was 80*l.* per month, agreed to pay him a certain sum for his household furniture, fixtures, utensils in trade, &c., not mentioning the goodwill. The representation proved to be false. The declaration laid it as an agreement to sell the *goodwill*, household furniture, &c.:—*Held*, the plaintiff could recover on that declaration; but, semble, if not, it could be amended, although the judge at N. P. had refused leave to amend. *Cater v. Wood*, 19 C. B. N. S. 286. *Henman v. Lester*, 12 C. B. N. S. 776; 9 Jur. N. S. 601.

DECLARATION. 3 Abr. 570. *See* Pleading.

I. Time for Declaring, and non pros for not Declaring.[1]

II. Venue in Local Actions, Hinder of Causes of Action.[2]

DECREE in Equity.[3] 3 Ab. 574.

DEEDS. 4 Ab. 1. *See* Lease; Lien; Power of Attorney.

I. Definition, and General Nature of.[4]

II. What Contracts need not be by Deed.[5]

III. Execution of Deed.[6]

IV. Subject-matter of the Deed and Description of Premises and Consideration.[7]

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[1] Neither has the 15 & 16 Vic. c. 76, nor have the rules of H. T., 1853, altered the practice by which a plaintiff has the whole of the term next after appearance, whether in term or vacation, to declare. *Medway v. Gilbert*, 1 H. & C. 496; 32 L. J. Ex. 30.

Notice to declare may be given either in term or vacation. *Id.*

Where a writ of summons has issued against several defendants, who enter a joint appearance, and the plaintiff declares against some of them only, the others may after notice to declare, sign judgment of non pros as against themselves. *Bancroft v. Greenwood*, 1 H. & C. 778; 9 Jur. N. S. 160; 32 L. J. Ex. 154; 11 W. R. 349; 7 L. T. N. S. 719.

[2] A defendant cannot plead to so much of a declaration as claims a writ of injunction, —the claim being in the nature of a notice only that the plaintiff intends subsequently to ask for the writ. *Booth v. Taylor*, 35 L. J. Ex. 56.

Since the Act of 1852, a count for breaking and entering the premises of the husband may be joined with a count by the husband and wife for assaulting and imprisoning the wife. *Morris v. Moore*, 19 C. B. 359.

In the absence of special grounds, trover and detinue ought not to be joined. *Mirchford v. Taylor*, 34 L. J. C. P. 352.

In a local action, if it appears on the face of the declaration that the venue is laid in a different county than that in which the premises are situate, the objection is a subject of demurrer. *Clayton v. Best*, 8 L. T. N. S. 502—Q. B. *Richardson v. Locklin*, 6 B. & S. 777.

[3] The dismissal of a bill, seeking equitable relief in respect of an instrument on which a party can sue at law, is no bar to an action upon the same instrument, although the decree does not state the dismissal to have been without prejudice. *Beere v. Fleming*, 13 Ir. Com. Law Rep. 506—Ex.

It does not necessarily follow that a decree of the Court of Chancery on the same matter and between the same parties is an answer to an action for damages. *Swire v. Great Western Railway Company*, 33 L. J. Ch. 399. *Longmead v. Maples*, C. P. 11 Jur. N. S. 177.

[4] S. made his will, containing a specific bequest. He subsequently settled the property, reserving to himself a power of appointment by will; after which he executed a voluntary deed, by which he covenanted that his devisees and executors should, after his death, convey all the real and personal estate, or which he should then have disposed of by his will, to trustees for certain purposes:—*Held*, that this instrument was a pure deed, and not a will. *Patch v. Shore*, 9 Jur. N. S. 63; 32 L. J. Ch. 185.

[5] A. agreed with B. that B. might dig and carry away cinders from a cinder-tip, the property of A., B. paying A. a certain price per ton:—*Held*, that this agreement need not be by deed. *Smart v. Jones*, 15 C. B. N. S. 717.

[6] A deed (which was to be executed in duplicate, one to be prepared by each party, and to be interchanged between them) was executed by the grantee, but not attested, and was by him sent to the solicitor of the grantors to procure their execution; and they accordingly signed, sealed, and delivered it:—*Held*, that this was a complete delivery, and not an escrow until the duplicates were interchanged. *Kidner v. Keith*, 15 C. B. N. S. 35. A deed executed by A. on behalf of B. must, in order to bind B., be executed by A. in the name of B., or by A. in his own name, with such words as show that he is acting solely as the agent of B. *M'Ardle v. Irish Iodine Company*, 15 Ir. Com. Law Rep. 146, Ex.

[7] A shop, over which there was a leaden roof, was demised to M., under the description of "as the same were late in the occupation of C." During that occupation another tenant of the same landlord had a right to use the leaden roof:—*Held*, that these words were merely used for the identifica-

V. Recitals in and Construction of Deeds.[1]

VI. When Fraudulent and when Not.[2]

VII. Who entitled to Custody of.[3]

VIII. Evidence connected with.[4]

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tion, and did not limit the rights of M. to the absolute enjoyment of the roof. *Martyr v. Lawrence*, 10 Jur. N. S. 858; 10 L. T. N. S. 677, L. J. A grant under this description, "All that piece or parcel, &c., measuring in width from east to west thirty feet, which piece or parcel of land hereby conveyed is more particularly delineated in the map in the margin, the fences of which piece of land hereby conveyed on the east and west sides are to be made and maintained by M. (the vendor). In an action for a trespass to this land, evidence was given that, before the deed was executed, the ground had been staked out by the grantee under the direction of the grantor, and that the breadth of the space between the fences was in no part equal to thirty feet:—*Held*, that after these facts had been proved it was for the judge to interpret the deed and to say what passed under it. *Skull v. Glenister*, 33 L. J. C. P. 185. Evidence may be given of a consideration not mentioned in a deed, provided it is not inconsistent with the consideration expressed. *In re British and Foreign Cork Company, Ex parte Leifchild*, 11 Jur. N. S. 941. *See* 14 W. R. 806.

[1] The rule that recitals may control general words is applicable to all deeds, and not only to releases. *Jenner v. Jenner*, 35 L. J. 329, Ch.; 1 L. R. Ex. 361. Where they are inconsistent, the operative part of a deed prevails over the recitals; but where the operative part is ambiguous, the recitals may be resorted to, to explain the ambiguity. *Young v. Smith*, 37 Beav. 87. *See Jones v. Minton*, 36 L. J. 201; 2 L. R. 34. *Gwyn v. Neath Canal Navigation Company*, 3 L. R. C. Ex. 209; 37 L. J. 122; 18 L. T. 688. The rule that a reversion will pass by general words, unless a different intention is distinctly shown in other parts of the instrument, such intention may be gathered by implication from the form of the deed. *Mallineux v. Ellison*, 8 L. T. N. S. 236. A conveyance by deed made under the authority of statute must be read as if the sections of the act were incorporated in it. A conveyance granting land for a special purpose must be construed as conveying all the rights necessarily incident to the due execution of that purpose. *Elliot v. North-Eastern Railway Company*, 10 H. L. Cas. 333. An assignment, in general terms, of personal estate will pass promissory notes in the possession of the settlor, although not endorsed to the donee. *Richardson v. Richardson*, 15 W. R. 690.

[2] On an interpleader issue, there being strong evidence that the claimant had been privy to a scheme to defeat and defraud the execution creditor, not only after but before the judgment; and that, in pursuance of this scheme, he had taken a transfer of the property of the debtor, his partner:—*Held*, nevertheless, that though if it were merely meant as a trick and a device by the way of pretended transfer, it was invalid; yet, as if between the parties it was intended to take effect, then, whatever its object, it was valid. *Luff v. Horner*, 3 F. & F. 480. A deed by a father, by which he purported to secure the amount of certain forgeries of his son, to the holders of the forged bills, who gave them up, was set aside, on the ground of undue influence, and compounding a felony. *Williams v. Bayley*, 1 L. R. H. L. 200; 34 L. J. Ch. 717. To support a deed, voluntary on the face of it, against creditors, the proof of a valuable consideration must be clear and free from suspicion. *Graham v. O'Keefe*, 16 Ir. Chanc. Rep. 1, R. *See Spirett v. Willows*, 34 L. J. Ch. 365. A., being in insolvent circumstances, assigned his property for the benefit of his creditors. B., who was a non-assenting party to the deed, was a creditor of A. on two bills of exchange, on which he was proceeding at the time of the deed of assignment. The deed was expressed to be meant to secure all the debts existing at the time of the execution:—*Held*, that the deed was not fraudulent and void against B., as tending to deprive B. of costs in the action. *Evans v. Jones*, 11 Jur. N. S. 784; 34 L. J. Ex. 25.

[3] Portionists obtained a decree against the tenant for life of the estates on which the portions were directed to be raised by terms of years, that the portions should be raised by mortgage of the terms, and that the tenant for life should produce title-deeds, leases, &c., which he did, but afterwards he took the title-deeds and leases out of the jurisdiction, whereupon he was ordered to deposit them with the Clerk of Records and Writs, which he did. The mortgage was effected, and the tenant for life applied for delivery out of the title-deeds and leases. The court refused to order the delivery out, but, on consent of the mortgagees, the order was made on his giving security for their safe custody and production at reasonable times. *Jenner v. Morris*, 1 L. R. Ch. App. 603.

[4] Repeated admissions (even on oath), by a party sued on a deed, that he had executed it, allowed to be explained, and evidence that he had in fact executed a deed, but for a different amount, and mistook it for the deed in question:—*Held*, sufficient to ac-

DEER. *See* Game.

DEFAMATION. *See post*, Libel; Slander.

DEFECT of Fences. *See post*, Fences; Replevin; Trespass.

DEMURRAGE.[1] 4 Ab. 36. *See* Charter-party; Insurance; Ship and Shipping.

DEMURRER.[2] 4 Ab. 41.

DELIVERY ORDER. *See* Sale.

DEPOSITIONS.[3] 4 Ab. 46.

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count for the admissions. *Painter v. Abel*, 3 F. & F. 518. *See Slattery v. Pooley*, 6 M. & W. 664. *King v. Cole*, 2 Ex. 628. *Fox v. Waters*, 12 A. & E. 43. As to the necessity of proving a deed by the attesting witness, where its validity and the payment of the consideration is contested by a person not a party to it. *See Leigh v. Lloyd*, 35 Beav. 455. A plea founded on s. 4, 6 Anne, c. 2, namely, that plaintiff's deed, on which he relies, was never duly registered, but that defendant's deed of a subsequent date was duly registered, is proved by showing that defendant's deed was registered after action commenced, but before plea pleaded. Registration does not relate back to the date of the deed, but it renders void the prior unregistered deed. *Carlisle v. Whaley*, 2 L. R. Ex. H. L. 391. Although the terms of a deed cannot be altered by parol, or a parol license set up in answer to a deed; yet where in a bill of sale it was stipulated that the loan should be paid off by instalments, and that if default should be made in payment of any instalment, the whole should be immediately due and payable; and the mortgagee consented verbally to the postponement of an instalment to a certain day, but before that day, entered and sold:—*Held*, the mortgagor was entitled to maintain his action for seizing the goods, he not having been "in default." *Albert v. The Grosvenor Investment Co.* 3 L. R. Q. B. 123, 37; L. J. 24.

[1] The defendants having purchased a cargo of coals on board a ship belonging to the plaintiff, signed and sent to a coal-meter a document called a turn-paper, which, after reciting that they had bought a cargo of coals, to be worked at the rate of forty-nine tons per working day, required him to work the same. The paper mentioned that the coals were to be unloaded at Dudman's Dock. The plaintiff took his ship to the moorings off Dudman's Dock, but a delay of six days occurred before the vessel could begin to unload at the dock, owing to the turns of other vessels for unloading coming first:—*Held*, that if the turn-paper was evidence of any contract between the plaintiff and the defendant, it was evidence only of a contract to unload after the vessel had got into the dock at the place for unloading. *Shadforth v. Cory*, 32 L. J. Q. B. 379; 3 L. T. N. S. 736, Ex. Ch. *See Lawson v. Burness*, 1 H. & C. 396. *Hudson v. Ede*, 2 L. R. Q. B. 566; 36 L. J. 273. By a bill of lading, a vessel was to be unloaded in regular turn:—*Held*, that the consignor is liable for her detention beyond her regular turn, although there was no express contract for demurrage in the bill of lading. *Cawthron v. Trickett*, 15 C. B. N. S. 754; 33 L. J. C. P. 182; 9 L. T. N. S. 609. When the inability to bring the vessel alongside the wharf was occasioned by the ordinary course of navigation, the lay days do not commence until the vessel arrived there. *Bastifell v. Lloyd*, 1 H. & C. 388. *Blech v. Balleras*, 3 Ell. & Ell. 203.

[2] Copies of the demurrer books, special cases, special verdicts, and appeal cases, directed to be delivered by rule 16, H. T. 1853, must be delivered at the judges' chambers. *Howell v. Wynne*, 15 C. B. N. S. 11; 10 Jur. N. S. 1041; 32 L. J. M. C. 241. Where a respondent, in a special case, delivered the copies to the judges' clerk at Westminster, the court directed him to pay the appellant the cost of the copies delivered at the judges' chambers by the appellant in default *Id.* In the case of cross demurrers, in the Q. B. and C. P., the plaintiff, and not the party first demurring, is entitled to begin. *Churchward v. The Queen*, 36 L. J. Ex. 185; 1 L. R. Q. B. 173. In Exchequer the party demurring first is entitled to begin. *Redway v. Sweeting*, 1 L. R. 2 Ex. 400; 36 L. J. 185. The C. L. B. Act 1852 doing away with special demurrers applies to actions of *quare impedit*. *Carlisle v. Whaley*, 2 L. R. H. L. 391.

[3] In replevin in which the question was, whether the *locus in quo* was the property of B., as lord of the manor, or formed part of the estate of M., the plaintiff tendered in evidence the depositions of two witnesses taken in a Chancery suit previously to the 1st November, 1852, instituted by E. against

DESCENT.[1] 4 Ab. 47. *See* Curtsey, 3 Ab. 531; *post*, Ejectment; Heir; Inheritance.

DETINUE.[2] 4 Abr. 67.

M., the object of which was to set aside the purchase of the estate, on the ground that M. had acted as his (E.'s) solicitor, and had given inadequate value. The plaintiff claimed under B., and the defendant on the record was tenant to M., who was the real defendant in the action:—*Held*, that the depositions were admissible as primary evidence of the same facts against M. in a subsequent action by a stranger to the suit of E. against M. *Richard v. Morgan*, 4 B. & S. 641; 33 L. J. Q. B. 114. The deposition of a deceased witness is admissible on condition, not only of its having been taken under the sanction of an oath, but also of sufficient notice having been given to the party against whom it is tendered, to have enabled him to attend and cross-examine the witness. *Fitzgerald v. Fitzgerald*, 3 S. & T. 397. Affirmed on appeal, 3 S. & T. 400. It is no objection to the admissibility of depositions taken under a commission that the Commissioner did not put any of the written interrogatories or cross-interrogatories which were sent out with the commission, but took the evidence of the witnesses under a *vivâ voce* examination. And, *semble*, any irregularity in the mode of taking the depositions cannot be a ground for refusing to admit them at the trial, but can only be taken advantage of by applying to the court to suppress the depositions. *Grill v. the General Iron Screw Collier Co.* (*Lim.*) 35 L. J. C. B. 321. The order to examine witnesses abroad directed that the depositions should be signed by the witness and by the commissioner. The commission did not contain this direction, and the depositions were not signed by the witnesses, but were authenticated by the seal of the commissioner:—*Held*, the depositions were admissible, the order being only directory, and the other side not prejudiced by the depositions not having been signed by the witness. *Hodges v. Cobb*, 2 L. R. Q. B. 652; 36 L. J. 265. Depositions of a deceased taken in the presence of accused, on a charge of robbery with violence, are admissible on a charge of murder; and the depositions were admitted, although they were not signed by the magistrate otherwise than as a part of the whole depositions, they being on separate sheets, but attached before signing. *Reg. v. Lee*, 4 Fost. & Fin. N. P. Cas. 63. Depositions of a witness on a former trial in England are not admissible unless between the same parties or their proxies. *Morgan v. Nicoll*, 37 L. J. C. P. 86; 15 L. T. 184. The decision of the judge at the trial that the deponent whose deposition has been taken under 1 Wm. 4, c. 22, is unable from permanent sickness to attend the trial, is subject to review by the Court in Banco, but such court will not exercise such jurisdiction unless satisfied that the judge has been misled by a fraudulent representation, or that injustice would otherwise be done. 35 L. J. 34. Depositions taken in a foreign country may be filed in the courts, if taken before persons duly authorised by the law of the country to administer oaths and take similar depositions in the courts here and abroad. *Levitt v. Levitt*, 2 H.& M. 626. *Semble*, it is not an objection that can be taken on a motion for a new trial, that depositions were admitted on the trial which were taken *vivâ voce* instead of on written interrogatories. The objection, if valid, ought to have been taken at chambers. *Grill v. General Iron Screw Collier Company*, 1 L. R. C. P. 600; 35 L. J. 321. A son, supposing his father dead, brought ejectment and failed. Subsequently the father brought ejectment for the same land and against the same defendant. On the trial the plaintiff tendered the evidence given on the former trial by a witness who had since died:—*Held*, such evidence was properly rejected, on the principle that the actions were not between the parties or persons privy to them, and that evidence cannot be admitted for a person against whom it could not be admitted. *Morgan v. Nicholl*, 2 L. R. C. P. 117; 36 L. J. 86. It is for the presiding judge at the trial to decide in his discretion whether the evidence that the witness is too ill to travel is sufficient. *R. v. Stephenson*, 31 Law J. Rep. N. S. M. C. 147; 1 L. & C. 165. To render a deposition of a witness absent through illness admissible in evidence on the trial of a prisoner for felony, it must have been taken in the presence of the magistrate as well as of the prisoner. *R. v. Watts*, 33 Law J. Rep. N. S. M. C. 63; 1 L. & C. 339. The 1 Wm. 4. c. 22, s. 10, which requires, before depositions taken under it can be read in evidence, that it should appear to the satisfaction of the judge that the deponent is unable from permanent sickness to attend the trial, does not mean that the sickness should be incurable, but that it should be of that degree of permanency as to make it last beyond the then impending trial. *The Duke of Beaufort v. Crawshay*, 35 L. J. C. P. 342.

[1] In a matter of inheritance the attainder for treason of a common ancestor, only creates an incapacity to take where the descent has to be traced through that common ancestor. In a case of inheritance between brothers or descendants of brothers, the attainder of their common father does not incapacitate. *Kynnaird v. Leslie*, 1 L. R. C. P. 389; 35 L. J. 226; 12 Jur. 468; 14 L. T. 756.

[2] A promissory note having been sued upon in a county court, and the money paid into court, and a demand was made for the cancelled note after the holder had notice of the payment, but before he had had time to

DEVISE. 3 Ab. 531; Executor and Administrator; Grants; Legacy; Trusts; Will.

DISCONTINUANCE of Action.[1] 4 Ab. 73. *See post*, Ejectment.

DISCOVERY and Inspection of Documents.[2] *See* Interrogatories; and 17 & 18 Vic. c. 125, s. 51.—The provisions of this Act are extended to County Courts, by order in Council, 7 Nov. 1867.

take the money out of court:—*Held*, that his refusal to give up the note did not constitute a detention. *Norton v. Blackie*, 13 W. R. 80, Ex. If a pledgee repledges, the original pledgor cannot maintain detinue against the sub-pledgee without having paid, or being ready and willing to pay, the original debt, to secure which the pledge was given. *Donald v. Suckling*, 1 L. R. Q. B. 585; 12 Jur. N. S. 795; 35 L. J. Q. B. 232; 14 L. T. N. S. 772. In an action of detinue, alleging no special damage, the court will compel a plaintiff to elect whether he will stay all proceedings on delivery of the chattel in dispute, on payment by the defendant of nominal damages, and all the costs of the action, or will proceed for greater damages at the risk of all costs. *Lyons v. Keller*, 15 Ir. Com. Law Rep. App. 1, Ex. As to pleading a lien. *See Mecklenburgh v. Glyn*, 13 W. R. 291. In an action for detaining title-deeds, it is no answer to plead that they were lost, unless it be shown that it was without the defendant's default. *Goodman v. Boycott*, 31 L. J. Q. B. 69; 2 B. & S. 1. He who has the legal estate for life may maintain an action to recover the title-deeds against a contingent remainder man in fee. *Allwood v. Heywood*, 52 L. J. Ex. 153; 1 H. & C. 745. So may a reversioner recover them from a party with whom they may have been deposited by a tenant for life. *Easton v. Landon*, 33 L. J. Ex. 34. The receiver of letters as such a property in the paper that he may bring detinue against the sender if he gets them back again into his possession. *Oliver v. Oliver*, 31 L. J. C. P.; 411 C. B. 139. In detinue the plaintiff is entitled to a writ of injunction, as well as to sue for a wrongful detention. *Mayall v. Highey*, 31 L. J. Ex. 329.

[1] Where, after an express contract to compromise an action, plaintiff, contrary to his undertaking to discontinue his suit, proceeded with it, obtained judgment (defendant not appearing), and issued execution; defendant has a good cause of action for damages on the breach of contract. *Burke v. O'Callagan*, C. P. 17 Ir. Com. Law Rep. 42. A judge's order had been drawn up by consent, that one of two actions should abide the event of the other. Before the first came on for trial, it was discontinued on account of the death of a material witness:—*Held*, this could not be deemed a discontinuance of the first action as to justify the plaintiff obtaining judgment in the second. *Rawlings v. Regent's Canal Company*, 15 L. T. N. S. 281, C. P. Verdict for a plaintiff on a first trial, and rule absolute for a new trial. Nothing was done for more than a year. The defendant then gave a month's notice of his intention to proceed by proviso. The plaintiff then discontinued:—*Held*, that the defendant was not entitled to costs beyond the period when issue was joined. *Reynolds v. Hickman*, 9 L. T. N. S. 757, Q. B.

[2] An application for a discovery of documents must be made upon an affidavit of the party to the cause. *Christopherson v. Lotinga*, 15 C. B. N. S. 809; 10 Jur. N. S. 180; 33 L. J. C. P. 121. And must show that there is some one document in the possession or power of the other side, to the inspection of which he is entitled. A mere affidavit of belief that such a document exists, and is in the party's possession or power, will not be sufficient. *Evans v. Jones*, 1 L. B. C. P. 656. But, in the case of a corporation aggregate, the affidavit may be made by their attorney. *Kingsford v. Great Western Railway Company*, 16 C. B. N. S. 761; 33 L. J. C. P. 307; 10 L. T. N. S. 722. The affidavits should identify the documents of which discovery is sought, a mere vague suggestion that some documents exist will not suffice. *Woolley v. Pole*, 14 C. B. N. S. 538; 32 L. J. C. P. 263. The Court of Probate has jurisdiction to order the plaintiffs, in a suit propounding a will, to produce not only the testamentary documents, but all correspondence connected with the making of the will, and, where the sanity of the testator is questioned, letters written by, or by the direction of, the testator, or to him, on matters of business at or about the date of the will. *Hunt v. Anderson*, 1 L. R. P. & D. 476; 37 L. J. 27. Defendant in an action of breach of promise of marriage is entitled to inspect and take copies of his letters in the possession of plaintiff. *Stone v. Strange*, 34 L. J. N. S. 72, Ex. In an action by the executors of a deceased person against a railway company for damages in having by negligence caused the death of the deceased, the defendants pleaded that they had paid a sum to the deceased in satisfaction for the accident; the defendants admitted the possession of two documents, one furnished to them by a medical man whom they had sent to examine the deceased, the other furnished to them by one of their clerks respecting the accident:—*Held*, that they were not privileged, and to be produced for inspection. *Baker v. London and South-Western Railway Company*, 3 L. R. Q. B. 91; 37 L. J. 53. When an inspection of documents is asked, the court is not bound by the denial of the party in whose possession they are that they relate to the case of the adversary; but if the court can collect from the whole of the materials before them, that, although they may relate to the subject-

DISEASES, Prevention. *See* Cattle; Nuisance; Public Health.

DISORDERLY House.[1] 4 Ab. 77. *See* Bawdy House, 2 Ab. 386; Dancing, 3 Ab. 553; *post*, Gaming; Use and Occupation.

DISSENTERS, and Dissenting Chapels and Ministers. *See* Marriage; Religion.

DISSOLUTION. *See* Corporation, 3 Ab. 263; *post*, Marriage; Partners.

DISSOLUTION of Marriage. *See* Husband and Wife; Marriage.

DISTRESS. 4 Ab. 78.

For Rent.

(A) *For what Rent.*[2]

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matter of the suit, they are not such as to go to establish the case of the party asking inspection, they will refuse inspection. *Chartered Bank of India, Australia, and China v. Rich*, 4 B. & S. 73; 32 L. J. Q. B. 300; 8 L. T. N. S. 454. The rule that a defendant is not obliged to answer any question which will subject him to forfeiture or penalties, applies to forfeiture or penalties under a foreign law, as well as under our municipal law. *United States of America v. McRae*, 3 L. R. Ch. App. 79; 37 L. J. 129; 17 L. T. 428. Inspection will only be allowed where it is reasonably shown that the documents sought to be inspected really exist, and are relevant to the case of the party seeking the inspection. *Houghton v. London and County Assurance Co.* 17 C. B. N. S. 80. But an inspection of the plaintiff's books was granted, which the defendant alleged to be necessary, for the purpose of establishing a set-off in respect of commission which he claimed on sales. *Bull v. Clarke*, 15 C. B. N. S. 851. In an action upon a fire policy, the court made an order for the production of communications which passed between the company and their agent by whom the insurance was effected, and between the company and other offices who shared the risk, relative to the existence and value of the property about to be insured. *Woolley v. Pole*, 14 C. B. N. S. 538; 32 L. J. C. P. 263; 1 H. & C. 134. But they refused to allow the plaintiff to inspect the reports and list of salvage made out for the company by their own officers. *Id.* In the well-established proposition, that the plaintiff has no right to compel a defendant to produce any documents which do not in some decree make out the plaintiff's title, the word "title" bears the extended meaning of "case." *Jenkins v. Bushby*, 35 L. J. 400.

[1] The proprietors of a common brothel are liable to an indictment for a common nuisance in respect thereof, although there be no evidence that any indecency or disorderly conduct was perceptible from the exterior of the house. *Reg. v. Rice & Wilton*, 1 L. R. C. C. R. 20; 35 L. J. M. C. 93; 10 Cox C. C. 155; 13 L. T. 678. S. being the owner of a house, let out the different apartments in it separately to young women, who, to his knowledge and with his consent, used them for the purposes of prostitution. They were merely weekly tenants. When he let the rooms he knew of the purposes to which they would apply them, but he received no share of the earnings of the women. He did not live in the house, and he only went there to collect his rents. He had no other control over the tenants than arose from his power as landlord to determine the tenancies:—*Held*, that he could not be indicted for keeping a disorderly house. *Reg. v. Stannard*, 33 L. J. M. C. 61; 9 Cox, C. C. 405, C. C. R.; 9 L. T. N. S. 428. *Reg. v. Barrett*, 9 Cox, C. C. 255; 1 L. & C. C. C. 263; 32 L. J. M. C. 36; 11 W. R. 124; 7 L. T. N. S. 435. A. was charged with aiding and abetting C. in keeping a disorderly house. B. was the head-waiter in the establishment, and servant to C., and in the absence of C., against whom several warrants were out for keeping the establishment in a disorderly manner, A. acted as manager on certain nights, when it was conducted in a disorderly manner:—*Held*, that these facts would have been sufficient to justify the magistrate in finding A. guilty of the charge made against him; and that the existence of the relationship of the master and servant between himself and C. constituted no defence to the charge. *Wilson v. Stewart*, 11 W. R. 640. A building registered under 18 & 19 Vic. c. 81, as a place of religious worship by the association of "recreative religionists," where sacred music was sung and played, and discourses delivered, cannot be deemed when opened on Sunday a disorderly house within 21 Geo. 3, c. 49. *Baxter v. Langley*, 38 L. J. M. 61.

[2] An owner of a factory was in the habit of letting standings therein for lace machines, himself supplying the power for working them, there being no demise of the room:—*Held*, that the weekly payments could not be distrained for as rent. *Hancock v. Austin*, 14 C. B. N. S. 634; 32 L. J. C. P. 252; 8 L. T. N. S. 429; 10 Jur. 77. After the registration of a valid deed of arrangement according to the Bankruptcy Act, 1861, a

(B) *Who entitled to Distrain.*[1]

(C) *Property in Goods Distrained and what may be taken.*[2]

(D) *When and where a Distress may be made, and of Fraudulent Removals.*[3]

(E) *Mode of Distraining.*[4]

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distress cannot be levied upon the effects of the debtor for more than one year's rent due prior to the date of such registration. *Williams v. Cadbury*, 2 L. R. C. P. 453; 36 L. J. C. P. 233; 16 L. T. N. S. 354. An agreement by a purchaser to pay rent gives the vendor a right of distress for the rent. *Yeoman v. Elleson*, 36 L. J. C. P. 326; 2 L. R. C. P. 681. The act as to fraudulently removing applies to the case of a tenant occupying under an agreement for a lease, not under seal. *Anderson v. Midland Railway Company*, 3 Ell. & Ell. 614; 30 L. J. Q. B. 9. Half a room in a factory partitioned off from the rest, with a supply of sufficient steam power to drive certain lace machines, was let to A. at a fixed annual rent, subject to deductions for hindrances to the working of the steam-engine :—*Held*, a sufficient demise to give right of distress. *Selby v. Greaves*, 37 Law J. Rep. C. P. 251.

[1] Where a mortgage by demise has been paid off by the assignee of the equity of redemption, who takes from the mortgagee an undertaking to execute a transfer of the mortgage, there is an implied authority to the assignee of the equity of redemption to distrain in the name of the mortgagee. *Snell v. Finch*, 13 C. B. N. S. 651; 9 Jur. N. S. 333; 32 L. J. C. P. 117; 7 L. T. N. S. 747. One of two joint-tenants may demise his part to the other with the usual incidents of a reversion and right to distrain, or the two might distrain. *Cowper v. Fletcher*, 6 B. & S. 464; S. P. 4 Ir. Com. L. R. 332. A man may profess to distrain for one cause, and *in replevin* avow for another, if a good one. *Phillips v. Whitsed*, 2 El. & El. 804. A distress is valid after notice from the vestry of a metropolitan parish under 25 & 26 Vic. c. 102, s. 96, to pay the rent to them, unless the rent be actually paid before the distress. *Ryan v. Thompson*, 37 L. J. C. P. 135. Goods of K. were seized by the plaintiff under a distress for rent of a house alleged to have been demised by the plaintiff to R., and were delivered by the plaintiff to the defendant to sell as his auctioneer. When the sale was about to begin R. served a notice on the defendant that the distress was void, and requiring him not to sell, or, if he sold, to retain the proceeds for him. The defendant sold the goods, but refused to pay over the proceeds to the plaintiff, and defended an action by the plaintiff, relying on the right and by the authority of R. :—*Held*, that the defendant might set up the *jus tertii* of R. as an answer to the action. *Biddle v. Bond*, 6 B & S. 225.

[2] The right of property in goods distrained for rent remains in the tenant until sale, and the taking of such goods to himself, at the appraised value, in discharge of the rent by a landlord, is not equivalent to a sale. *King v. England*, 4 B. & S. 782; 10 Jur. N. S. 634; 33 L. J. Q. B. 145; 9 L. T. N. S. 645. Goods pledged to a pawnbroker cannot be distrained, and if they be, he is entitled to recover the full value from the distrainer, *Stone v. Leach*, 18 C. B. 479; 34 L. J. P. 150. Goods of a third person on the premises of a bankrupt at the time of his committing an act of bankruptcy, are not in his possession, order, and disposition, if at the time of such act of bankruptcy there is a distress for rent upon such goods. *Sacker v. Chidley*, 11 Jur. N. S. 654.

[3] Condition in a lease that the tenant should pay the last half-year's rent in advance, which last half-year's rent should be considered as reserved and due on the 29th September preceding, if the landlord should see cause for such demand:—*Held*, that the landlord was entitled to demand the last half-year's rent, and to distrain for it at any time between the 29th September and the expiration of the tenancy, without demand previous to the 29th September. *Witty v. Williams*, 10 L. T. N. S. 457. A. being tenant at will, at a yearly rent, died, leaving rent in arrear. The day after his death the lessor distrained, the house being occupied by A.'s servants :—*Held*, that the distress was illegal, and that it was not made "during the possession of the tenant from whom the rent became due," within 8 Ann, c. 14, s. 6. *Turner v. Barnes*, 2 B. & S. 435; 9 Jur. N. S. 199; 31 L. J. Q. B. 170. A tenant rented a stable, and was in the habit of keeping his cart on a part of the road adjoining the stable, which had been paved for that purpose by his landlord. In an action for seizing a cart, while standing in the road, as a distress for rent :—*Held*, that the paved part of the road was to be considered a part of the demised premises, and that the landlord might lawfully seize the cart there. *Gillingham v. Gwyer*, 16 L. T. N. S. 640. The 11 Geo. 2, c. 19, s. 1, enabling a landlord to follow goods of a tenant fraudulently removed from the demised premises, to prevent a distress, applies to the case of a tenant occupying under an agreement for a lease, not under seal, and that in the meantime it should operate as an agreement only, and that until the execution of the lease, the rights and remedies shall be the same as if the lease had been executed. *Anderson v. Midland Railway Company*, 3 Ell. & Ell. 614.

[4] There is no illegality in distraining for rent by climbing over a fence, and so gaining access to the house by an open door. *Eldridge v. Stacey*, 15 C. B. N. S. 458; 32 L. T.

(F) *Of the Charges to be made.*[1]

(G) *Payment of Rent under, and to whom.*[2]

(H) *Making several Distresses, and abandoning Distress.*[3]

(I) *Impounding Distress.*[4]

(J) *Wrongful and excessive Distress.*[5]

C. P. 25; 10 Jur. N. S. 517; 9 L. T. 291, C. P. But an entry through a window which is fastened by means of a hasp, is not lawful. *Hancock v. Austin*, 14 C. B. N. S. 634; 32 L. J. C. P. 252; 8 L. T. N. S. 429. There is a distinction between entry through an unfastened door, and entry through an unfastened window. *Nash v. Lucas*, 1 L. R. 2 Q. B. 590. A landlord in making a distress got over a fence or wall of from five to eight feet high at the back of the tenant's house, such being the only means of effecting an entrance, as the front door was locked:—*Held*, that such a proceeding was illegal. *Scott v. Buckley*, 16 L. T. N. S. 573. The defendant, who was landlord to the plaintiff, from whom rent was due to him, had, in order to make a distress, entered on the premises by forcibly breaking in a window, and seizing and selling his goods:—*Held*, that this mode of entry on the premises being unlawful in itself, rendered the defendant a trespasser *ab initio*. *Attack v. Bramwell*, 3 B. and S. 520. And that the plaintiff was entitled to recover the full value of the goods, and not that value minus the sum due for rent. *Id.* Although in levying a distress, when a person has once obtained peaceable possession of the premises, and been forcibly put out of them, he may legally break open a door or a window for the purpose of regaining possession; yet when a person has merely got his foot and arm between the door and the lintel, or by putting a pair of shears between the door and the lintel has prevented its being closed, this is not a possession which will entitle him to break open a door or a window for the purpose of gaining admission to the house. And therefore a distress made under such circumstances is illegal *ab initio*. *Boyd v. Profaze*, 16 L. T. N. S. 431. See 15 C. B. 458.

[1] A person cannot be convicted in the treble penalty for taking or retaining any higher or other charges attending the levy and disposition of a distress for rent or rates not exceeding 20*l.*, than those mentioned in the schedule; unless he has charged for an item not mentioned therein, or at a higher rate, or for something not actually done. He cannot be convicted for charging for an unnecessary item, such item being in the schedule. *Nott v. Bound*, 1 L. R. Q. B. 405.

[2] A man merely left in possession of a distress by the person who distrained, has no implied authority in law to receive from the tenant payment of the rent distrained for. *Boulton v. Reynolds*, 2 El. & El. 369; 6 Jur. N. S. 46; 29 L. J. Q. B. 11.

[3] The man in possession of goods distrained for rent, having quitted the house for the purpose of refreshment, found on his return the door purposely locked against him by the tenant, and broke it open for the purpose of re-entering:—*Held*, that there being no evidence of an abandonment of the distress, the man in possession was justified in so re-entering. *Bannister v. Hyde*, 2 El. & El. 627. It is a question for the jury, whether or not a distress has been abandoned after entry. *Eldridge v. Stacey*, 9 L. T. N. S. 291—C. P. A bailiff having distrained in a dwelling-house, and remained there in possession longer than five days, and being then expelled, and afterwards retaking the goods distrained upon (finding them off the premises), but along with others not included in the distress:—*Held*, that the doctrine of confusion of property did not apply to preclude the owner from bringing trespass. *Smith v. Torr*, 3 F. & F. 505.

[4] It seems that a distress is sufficiently impounded, in accordance with 11 Geo. 2, c. 19, s. 10, where, with the consent of the tenant, the person distraining makes an inventory of part of the goods distrained, serves it, together with notice of the distress, on the tenant, and leaves a man in possession on the premises, but does not disturb, lock-up, or remove any of the goods. *Johnson v. Upham*, 2 El. and El. 250. Upon the equity of the 2 Will. & M. sess. 1, c. 5, s. 2, a tender by the tenant of the rent due, and costs, to the person distraining, within five days after the distress is taken and before sale, though after the distress has been impounded, in accordance with 11 Geo. 2, c. 19, s. 10, is a good tender. *Id.* But detinue does not lie for goods impounded damage feasant, where tender of amends has been made after the impounding. *Singleton v. Williamson*, 31 L. J. Ex. 287; 7 H. & N. 747. If a distrainor abuses a distress by working it, the owner may interfere and prevent it, and no action can be brought as for rescue or pound breach. *Smith v. Wright*, 30 L. J. Ex. 313; 6 H. & N. 821.

[5] Where a landlord distrains for rent, and the distress is void *ab initio*, and does not merely become so by a subsequent irregularity, the measure of damages in an action of trespass is the actual value of the goods taken, and the jury, in estimating the damages, ought not to make any deduction in respect of the rent due. *Attack v. Bramwell*, 3 B. & S. 520; 32 L. J. Q. B. 146;

(K) *Costs and Expenses of.*[1]

DISTRIBUTION, Statute of. 22 & 23 Car. 2, c. 10. By 19 & 20 Vic. c. 94, the special customs of London and in the provinces of York and other places, as to the distribution of deceased Personal Estates are abolished since 1 Jan. 1857.

DIVIDEND WARRANTS.[2] *See post,* Stock and Stockbrokers.

DOCKS.[3] 5 Ab. 121. The 10 & 11 Vic. c. 27, is the Docks Consolidation Act.

DOGS. *See* Animals, 4 Ab. 121; Game. 30 & 31 Vic. c. 5, repeals the assessed tax duty, and imposes 5*s.* excise annual duty. Owners rendered liable for injuries by dogs to cattle and sheep, 28 & 29 Vic. c. 60.

DOMICILE. 4 Ab. 122. Affecting Wills, 24 & 25 Vic. 114–121.

I. Domicile remains until Abandoned, or a New One Gained, p. 173.
II. Domicile of Husband and Wife, p. 174.
III. Personal Property follows Situs of the Owner, p. *id.*

I. Domicile remains until Abandoned, or a New One Gained.[4]

7 L. T. N. S. 740. In an action against landlord for excessive distress, and where it was proved that the goods were worth nearly double the amount distrained for, and the bailiff remained in possession for nearly a a week:—*Held*, that though no actual damage was proved, the jury were bound to find for nominal damages. *Chandler v. Doulton*, 3 H. & C. 553; 34 L. J. Ex. 89; 11 L. T. N. S. 639 Ex. Tenant was in arrear of rent both for close A. and close B., held under different demises from the same landlord. The landlord made a joint distress upon A. and B:—*Held*, on demurrer, in an action of replivin that the landlord might cure his distress by avowries of the separate right of distress. A wrong distress may be cured by a right avowry. *Phillips v. Whitsed*, 2 Ell. and Ell. 804.

[1] A bailiff in possession under a distress for rent is not entitled, after the rent is paid and the landlord has withdrawn, to sell any of the goods for the payment of his fees and expenses in holding possession. *Harding v. Hall*, 14 L. T. N. S. 410, Ex.; 14 W. R. 646. *See Nott v. Bound*, *ante*, 172.

[2] By 27 & 28 Vic. c. 90, s. 2, no letter or other writing under hand only, containing any request or direction to any joint stock or other company or society, or to any secretary, treasurer, or other officer thereof, or to any banker, by the owner or proprietor of any stocks, funds, or shares of or in any such company or society, to pay the dividends or interest arising from any such stocks, funds, or shares to any person named in such order, request, or direction, shall be chargeable with stamp duty as a letter or power of attorney.

[3] Dock companies who have a duty to perform, and who may be made responsible for injuries if they know the cause of mischief which, in the discharge of that duty, they ought to remedy, are equally responsible if they negligently remain ignorant of those causes of mischief, and so leave them unremedied. *Mersey Dock Trustees v. Gibbs*, 11 H. L. Cas. 686; 12 Jur. N. S. 571; 35 L. J. Exch. 225; 14 L. T. N. S. 677. A private person or a company having a right to levy tolls in respect of the performance of a particular work, will be liable in damages for injuries occasioned by performing it improperly. *Id.* A corporate body authorised to perform such a work, and receiving tolls in respect of it, though obtaining no profit for itself from such tolls, but collecting them for the maintenance of the work and the possible future benefit of the public, is equally responsible for injuries arising from the improper performance of such work, and the funds thus obtained must discharge that liability. *Id. Duncan v. Findlater*, 6 Cl. & Fin. 894, overruled.

[4] In order to lose a domicile of origin, and to acquire a new domicile, a man must intend *quatenus in illo exuere patriam.* Change of residence alone, however long and continued, does not effect a change of domicile as regulating the testamentary acts of the individual. There must be an intention to change the domicile. *Moorhouse v. Lord*, 10 H. L. Cas. 272; 13 *id.* 481; 32 L. J. Ch. 295. *Jopp v. Wood*, 11 L. T. N. S. 406. The law will not draw an irresistible inference of an intention *exuere patriam*, from the mere fact of length of residence in a foreign country. *Jopp v. Wood*, 11 L. T. N. S. 106. *Moorhouse v. Lord*, 9 Jur. N. S. 677; 32 L. J. Chanc. 295; 8 L. T. N. S. 212—H. L. The circumstance that a foreign fixed residence is adopted merely with the view to the acquisition of a fortune, and with an ulterior intention of returning home, is not sufficient to prevent the place of residence from becoming that of domicile. *Id. Atlardice v. Onslow*, 10 Jur. N. S. 352; 33 L. J. Ch. 434; 12 W. R. 397; 9 L. T. N. S. 674. See *President of United States v. Drummond*, 33 L. J. Ch. 501. *Drevon v. Drevon*, 34 *id.* 129. The judgment

II. Domicile of Husband and Wife.[1]

III. Personal Property follows Situs of the Owner.[2]

DONATIO Causa Mortis.[3] 4 Ab. 128.

DOWER. 4 Ab. 130. *See* 3 & 4 Vic. c. 105.

DRAINAGE.[4] 4 Ab. 142. *See* 24 & 25 Vic. c. 133; 25 & 26 *id.* c. 63; Metropolis, 21 & 22 *id.* 106; 26 & 27 *id.* 68; 30 & 31 *id.* c, 22.

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of foreign court of domicile, in an interest suit is conclusive. *Doglioni v. Crispin* (House of Lords), 35 L. J. P. & M. 129.

Officers in the India Companies service, being allowed to reside in Europe, subject to order to return, can acquire a domicile of residence there. *Attorney-Gen. v. Pottinger*, 30 L. J. Ex. 284.

[1] In 1854 an Englishman, being in difficulties, left England, and went to reside in Scotland. He left his wife in England, she refusing to accompany him. In 1858 he became lessee, for a term of six years, of a house, &c. He occasionally visited England, and corresponded with his solicitors. In 1860 he commenced proceedings in the Scotch courts for a divorce from his wife, on the ground of adultery:—*Held*, that the husband had not acquired a Scotch domicile, and the court of session had no jurisdiction. *Pitt v. Pitt*, 4 Macq. H. L. Cas. 627; 10 Jur. N. S. 735; 10 L. T. N. S. 626. The domicile of the husband in cases of this kind is not to be regarded in law as the domicile of the wife. *Id.*

[2] The law of the domicile of a testator governs questions of testacy and intestacy, of the construction of the will, and of the rights of those who claim to be his next of kin. *Enohim v. Wylie*, 10 H. L. Cas. 1.

A will of personality is to be construed according to the law of the testator's domicile, unless something to the contrary appears on the face of the will. *Boyes v. Bedale*, 1 H. & M. 798; 10 Jur. N. S. 196; 33 L. J. Ch. 283; 10 L. T. N. S. 131. *Goodman v. Goodman*, 3 Giff. 643. In questions of domicile, less weight is given by the courts to a testator's declarations than to his acts, and no one act is necessarily *per se* paramount in importance; but the relative importance of all his acts, however trivial, must be considered evidence of the *animus manendi* or *revertendi*. *Drevon v. Drevon*, 10 Jur. N. S. 717; 10 L. T. N. S. In 1856, R., whose domicile of origin was England, was appointed chief justice of Ceylon, during the pleasure of the crown, and he resided with his family there, in the exercise of the duties of his office, until his death in 1860. He left a library and other effects in England, and he invested large sums of money, on mortgage in Ceylon:—*Held*, that in the absence of any evidence of an intention to acquire a foreign domicile, he retained his domicile of origin, and therefore his personal property was subject to legacy duty. *Attorney-Gen. v. Rowe*, 1 H. & C. 31. *Attorney-Gen. v. Kent*, *id.* 12. *Capdevielle*, *In re*, 2 H. & C. 985; 10 Jur. N. S. 1155; 33 L. J. Exch. 306. The judgment of the court of the domicile of a deceased party at the time of death is binding on the court of a foreign country in all questions as to the succession and title to personal property, whether under testacy or intestacy, where the same questions between the same parties are in issue in the foreign court which have been decided by the court of the domicile. *Crispin v. Doglioni*, 3 S. & T. 96; 8 L. T. N. S. 518; 1 H. L. 301; 26 L. J. P. & N. 124.

[3] To constitute a *donatio mortis causâ*, the evidence must be clear that the donor gave it in contemplation of death. *Cosnahan v. Grice*, 15 Moore, P. C. C. 215. *Lambert v. Overton*, 11 L. T. N. S. 503.

Where the circumstances are such as to indicate an intention to make a testamentary gift, and the intention fails for want of proper attestation, a *donatio mortis causâ* will not be presumed. *Patteson, In re—Mitchell v. Smith*, 33 L. J. Ex. 596; 10 L. T. N. S. 801—L. J. The indorsement and delivery of a promissory note to be effectual must be such as will enable the indorsee himself to indorse and negotiate it. *Id.* Money due on a life policy and on a banker's deposit note held to be capable of passing as *donatio mortis causâ*. *Amis v. Witt*, 33 Beav. 619.

When barred by lapse of time. See *Marshall v. Smith* 10 Jur. N. S. 1174; 11 L. T. N. S. 443. Or by deed. *Dent v. Clayton*, 10 Jur. N. S. 671; 33 L. J. Ch. 503; 10 L. T. N. S. 865.

[4] The 27th and 28th Vic. c. 114, repeals 12 & 13 Vic. c. 100, and enacts other provisions for the improvement and drainage of lands in Great Britain and Ireland. See 28 & 29 Vic. c. 88; 29 & 30 *id.* c. 49.

The security which may be taken by the Inclosure Commissioners from a landowner under sect. 6 of 10 & 11 Vic. c. 38, for the costs of proceeding on an application for leave to execute drainage work, under the act, is confined to the commissioners' costs; the costs of a person opposing the application successfully cannot be recovered under it. *Inclosure Commissioners, In re*, 33 L. J. Q. B. 171; 9 L. T. N. S. 732. The Acts of the commissioners means *authorised acts*, and where damage arose from their neglect to keep a sluice in repair, the right to bring an action was not taken away. *Coe v. Wise*, Ex. Ch. 1 L. R. Q. B. 711.

A stream supplied by the drainage, natural and artificial, of cultivated land, and receiving the drainage of two or three inhabited houses in its passage to the river

DRAMA. *See* Copyright, 3 Ab. 251; Theatre.

DRUNKENNESS.[1] 4 Ab. 144.

DRINKING-FOUNTAINS. 25 & 26 Vic. c. 102.

DURESS.[2] 4 Ab. 146.

DYING Declaration.[3] 4 Ab. 147.

E.

EASEMENTS. 4 Ab. 149. *See also* Lights; Limitation, Statute of; Prescription; Watercourse.

I. Of the Nature, Qualities, and Incidents of Easements, p. 175.

II. Of the Acquisition of Easements, p. 176.

III. Right to Support as Accessory to Building on Land.

IV. Abandonment, Non-user, and Interruption, p. 176.

V. Of the Pleadings and Remedies connected with an Easement, p. 176.

I. Of the Nature and Incidents of Easements.[4]

into which it flows, is not a sewer within the meaning of the 11 & 12 Vic. c. 63, s. 43, and does not vest in the local board of health. *Reg. v. Godmanchester Board of Health*, 5 B. & S. 936; 1 L. R. Q. B. 328; 35 L. J. Q. B. 125; 14 L. T. N. S. 104. The duty of the local board under 11 & 12 Vic. c. 63, s. 58, to cleanse ditches, &c., is only conditional on the neglect of the owner or occupier of the land on which the nuisance exists to remove it after notice. *Id.*

[1] Although a person who, in a state of drunkenness such as to render him incapable of any reflection or deliberative act, buys property at an auction, pays the deposit, and signs the contract, is not liable in an action on the contract, yet semble, per Pollock, C.B., he may be liable for the expenses of a re-sale, rendered necessary by his wrongful act. *Hawkins v. Bone*, 4 Fost. & Fin. N. P. Cas. 311.

[2] As to bond given to obtain release of a personal chattel. See *Liverpool Marine Credit Company v. Hunter*, 3 L. R. 3 Ch. 479; 37 L. J. 386; 18 L. T. 749. *R. v. Southeron*, 6 Exch. 140.

[3] To render a statement admissible as a dying declaration, it is not enough that it appears that the person making it was under the impression that death must ultimately ensue, but that death was actually imminent. *Reg. v. Forrester*, 4 F. & F. 857. It is no objection to the admissibility of a dying declaration that it was made in answer to leading questions. *Reg. v. Smith*, 1 L. & C. C. C. 607.

[4] In order that rights over the land of one may be attached to the land of another, so as to pass with the ownership of the land, they must be such rights as are beneficial to the owner of the dominant tenement only so long as he remains owner of that tenement. *Bailey v. Stevens*, 31 L. J. C. P. 226. The right to use a pump is a discontinuous easement, and needs definite words to create it, and differs from a continuous easement, such as a right to drains, which passes with the premises, to which it appertains. *Polden v. Bastard*, 8 L. T. N. S. 535, —Q. B.; 32 L. J. Q. B. 372.—Exch. Ch.; 4 B. & S. 258. A claim, by custom, for all the freemen and citizens of a neighbouring city to run horse-races over certain land on Ascension Day in every year, is not a claim to an easement within 2 & 3 Will. 4, c. 71, s. 2 *Mounsey v. Ismay*, 3 H. & C. 486; 11 Jur. N. S. 141; 34 L. J. Exch. 52. Rights in gross are not within 2 & 3 Will. 4, c. 71. *Shuttleworth v. Le Fleming*, 19 C. B. N. S. 687; 11 Jur. N. S. 840; 34 L. J. C. P. 309. See *Bailey v. Stevens*, 31 L. J. C. P. 226; 12 C. B. 91. *See Constable v. Nicholson*, 14 C. B. N. S. 230; 32 L. J. C. P. 240. *Blacket v. Bradley*, 31 L. J. Q. B. 65; 1 B. & S. 940.

II. Of the Acquisition of Easements.[1]

III. Right to Support as Accessary to Building on Land.[2]

IV. Abandonment, Non-user, and Interruptions.[3]

V. Of the Pleadings and Remedies Connected with Easements.[4]

[1] The owner of land cannot, at his pleasure, create new rights or incidents of property and annex them to it, or render it subject to a new species of burden, so as to bind it in the hands of an assignee. *Hill v. Tupper*, 9 Jur. N. S. 725; 8 L. T. N. S. 703 Exch. Such a grant operates simply as a license or covenant on the part of the lessors. *Id.* Mere knowledge of the manner in which property conveyed was used by a vendor for the convenience of an adjoining tenement, will not affect the purchaser, if the property is conveyed without reservation. *Id.* A grantor cannot claim rights over property absolutely granted, even if such rights were, at the time of the grant, continuous and apparent easements enjoyed in respect of an adjoining tenement which remains the property of the grantor. *Id.* If an owner of two adjoining tenements conveys one of them to a purchaser absolutely, the tenement so sold is discharged from any quasi-servitudes to which it was subjected by the vendor during his ownership of both properties, and the purchaser is not bound to take notice of the manner in which the tenement purchased has been used for the convenience of the adjoining and unsold tenement. *Suffield v. Brown*, 10 Jur. N. S. 111; 33 L. J. Chanc. 249; 9 L. T. N. S. 627. See *Martyr v. Lawrence*, 10 L. T. N. S. 677. As to an implied grant to allow bowsprits to overhang a wharf. *Suffield v. Brown*, 9 Jur. N. S. 999; 9 L. T. N. S. 192,—R. See *White v Bass*, 7 H. & N. 722; 8 Jur. N. S. 312. Where B. was entitled in fee to two messuages, Nos. 1 and 2; she occupied No. 1, and let No. 2, and allowed the tenant a certain use over No. 1, which in time would ripen into an easement. She devised No. 2 "as now in the occupation of T. A.": —*Held*, this did not pass the easement over No. 1, which was devised to a different person. *Polden v. Bastard*, Ex. Ch. 1 L. R. Q. B. 156; 35 L. J. Q. B. 92. See *Suffield v. Brown*, 33 L. J. Ch. 249. *Pyer v. Carter*, 1 H. & N. Ex. 916. *Queen v. Phillips*, Ex. Ch. 30 L. J. C. P. 356; 11 C. B. 449. *Gale on Easements*, 77.

[2] The right of a person to the support of the land immediately around his house is not in the nature of an easement, but is the ordinary right of enjoyment of property, and till that is interfered with he has no legal ground of complaint, although, in fact, something may have been done which (without his knowledge) has occasioned results that will afterwards affect his property. *Backhouse v. Bonomi*, 9 H. L. Cas. 503. The right of the owner of land to the lateral supports of his neighbour's land is not an absolute right, and the infringement of it is not a cause of action without appreciable damage. *Smith v. Thackerah*, 1 L. R. C. P. 564; 35 L. J. 276, C. P.; 12 Jur. N. S. 545; 14 L. T. N. S. 761. See *Murchie v. Black*, 19 C. B. N. S. 190; 11 Jur. N. S. 608; 34 L. J. C. P. 337; 12 L. T. N. S. 735. See *Elwell v. Crowther*, 31 L. J. Ch. 763; 31 Bea. 143. Also 18 L. T. M. 437.

[3] Mere non-user for less than twenty years, of a privilege or of an easement to discharge foul dye water into a stream, is not in itself a proof of abandonment, which is a conclusion to be drawn from all the circumstances. *Crossley v. Lightowler*, 3 L. R. Eq. 279. But the actual disuser for twenty years, during which others have acquired adverse rights, destroys the right to the easements. Where there is a prescriptive right to a riparian easement, the user which originated the right must also be its measure, and the easement cannot be enlarged to the prejudice of any other person. S. C. on appeal, 36 L. J. Chanc. 584; 4 L. R. Eq. 279. Where an easement is claimed under sect. 2 of the 2 & 3 Will. 4, c. 71, the question of acquiescence or non-acquiescence in an interruption of the enjoyment thereof under sect. 4, is a question for the jury, to be determined by the acts and conduct of the claimant of the easement, within a year from the commencement of the interruption, and it is not necessary that the claimant should bring an action or commence a suit to prove the fact of non-acquiescence within that period. *Bennison v. Cartwright*, 10 Jur. N. S. 847; 33 L. J. Q. B. 137; 10 L. T. N. S. 266. The blocking up of a back door from premises into a public way for upwards of thirty years: —*Held*, not to have been an abandonment, the door having been reopened before the obstruction to the way was commenced. *Cook v. Mayor, &c., of Bath, V. C. M.*, 6 L. R. 6 Eq. 177; 18 L. T. 123.

[4] Where a party claims an easement, and proves only a part of his claim, the easement proved constitutes a different easement from the one claimed, and the claimant cannot obtain relief in equity. *Felkin v. Herbert*, 11 L. T. N. S. 173. Relief by way of mandatory injunction will not be refused on the mere ground that the building causing the damage had been completed before the bill was filed—and this is so whether the damage is to an easement or otherwise. *Durell v. Pritchard*, 1 L. R. Ch. Ap. 244; 35 L. J. 223. A plea that the defendant was possessed of a mill near plaintiff's land, and that for twenty years the occupiers thereof enjoyed as of right and without interruption, the right of maintaining a weir and mill-dam across the river, and penning

EASTER Offerings.[1] 4 Abr. 161.

ECCLESIASTICAL Commissioners.[2]

ECCLESIASTICAL Persons and Courts. 4 Abr. 161. *See* Burial Fees; Pews.

I. General Principles, p. 177.

II. Relative to the Observance of the Articles of Religion and Form, p. 177.

III. Relative to the Colonies and Foreign Dominions. See *ante* 108, Colonies.

IV. Relative to Courts connected with, p. 178.

V. As to Commissions under 3 & 4 Vic. c. 86, *see* 29 & 30 *id.* c. 111.

VI. Stamp Duties on Appointment to Benefices. *See* 27 & 28 Vic. c. 18, Sched. C.

I. General Principles.[3]

II. Relative to the Observance of the Articles of Religion and Form.[4]

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back the water for said mill, and that the grievances were a user by defendant of said right: — *Held*, that the plea was a bad defence, not averring previous user that caused damage to plaintiff's lands. *O'Brien v. Enright*, Q. B. Ir. 1 C. L. 718.

[1] Terriers extending down from 1727 to 1825, held evidence of a customary right to Easter offerings, which excluded any common-law claim to the same. *Reg. v. Hall*, 1 L. R. 1 Q. B. 632; 35 L. J. M. C. 251; 12 Jur. 892. Quære, whether Easter offerings are due as of common right? 35 L. J. M. C. *Id.* When claimed by custom, cannot be enforced by summary proceedings under 7 & 8 Wm. 3, c. 6, s. 1. *Reg. v. Kidd*, 16 L. T. 203.

[2] See 29 & 30 Vic. c. 111.

[3] The freehold of the church, the chancel, and churchyard, is in the rector, whether spiritual or lay; but this right carries with it no right of possession. The corporal possession is either in the spiritual rector, or vicar, or perpetual curate, for the use of parishioners, subject to the control of the ordinary. *Griffin v. Dighton*, 10 Jur. N. S. 69,—Q. B.: 5 B. & S. 93; 33 L. J. Q. B. 181; 9 L. T. N. S. 814. In a parish where there is both a lay rector and a vicar, the rector has no right to prevent the vicar having access to any part of the parish church by any of its doors. *Id.* The alms collected, whether at the offertory or during divine service, in a proprietary chapel, belong as of right to the rector of the parish in which the chapel is situate, to be disposed of as he and the churchwarden shall direct. *Dowdall v. Hewitt*, 10 L. T. N. S. 823. The profits of a benefice of a bankrupt clergyman do not vest in the assignees under the 24 & 25 Vic. c. 134, s. 135, until the assignees have obtained a sequestration, and the same has been published. *Hopkins v. Clarke*, 10 Jur. N. S. 1071; 33 L. J. Q. B. 334; 11 L. T. N. S. 204,—Ex. Ch. By immemorial custom, churchwardens may be bound to pay visitation fees to the registrars of the archdeacon. *Shepherd v. Payne*, 16 C. B. N. S. 132; 10 Jur. N. S. 540; 33 L. J. C. P. 158; 12 W. R. 581; 10 L. T. N. S. 193,—E. C. The appointment of a parish clerk need not be done by deed. *Roberts*, App., *Drewitt*, Resp., 18 C. B. N. S. 48; 1 H & P. 132. The office of registrar of an archdeacon may have fees to a reasonable amount annexed to it by immemorial usage. *Shepherd v. Payne*, 31 L. J. C. P. 297. A clergyman duly cited to attend a visitation by the ordinary of the diocese is privileged from arrest, *eundo redeundo et morando*. *M'Geath v. Geraghty*, S. P. *Blane v. Geraghty*, 15 W. R. 133,—Ir. C. P. A bishop has no right to refuse to institute to a living a clerk who has held a benefice in a diocese because he could not produce a testimonial from the bishop as to his honest conversation, ability, and conformity. *Marshall v. The Bishop of Exeter*, 31. L. J. C. P. 262; affirmed, H. L. 37 L. J. 331; 3 L. R. H. L. 17.

[4] In proceeding against a beneficed clergyman by articles, for maintaining doctrines contrary to the Thirty-nine Articles, and in derogation of the Book of Common Prayer, the articles alleged to be contravened must be specifically pleaded. *Heath v. Burder*, 15 Moore, P. C. C. 1. It is immaterial whether the unsound doctrines are preached or published in a book. *Id.* It is not necessary, in order to bring a beneficed clergyman within the operation of the 13 Eliz. c. 12, that he should have propounded any intelligible heterodox doctrine; it is sufficient if what he has propounded be directly repugnant to the doctrine laid down in the articles. *Id.* The opinions of eminent theologians are not evidence of the doctrine of the Church of England, but may be relied upon by way of self-defence. *Id.* In considering a charge of unorthodoxy, the court will decide solely by reference to the articles and formularies, without reference to the Holy Scriptures. *Id.* It is not an ecclesi-

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III. Relative to the Colonies and Foreign Dominions. *See* Colonies.

IV. Relative to Courts connected with.[1] As to Orders in Council relating to Commissioners, *see* 31 & 32 Vic. c. 19; as to amending Acts relating to Commissioners, *see* 31 & 32 Vic. c. 114; as to Episcopal and Capitular Estates, *see* 31 & 32 Vic. c. 111.

V. Commissions under 3 & 4 Vic. c. 86; *see* 29 & 30 id. c. 111.

VI. Stamp Duties on Appointment to Benefices. *See* 27 & 28 Vic. c. 18, Sched. C.

EJECTMENT. 4 Abr. 169. *See* Landlord and Tenant; Limitations, Statute of; Mortgage.

I. Right to and of Possession, p. 178.

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V. Costs in and Proceedings in Error, p. 179.

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VII. By Devisee, Heir-at-Law, and Mortgagee, p. 179.

VIII. Security for Costs and Staying Proceedings, p. 180.

I. Right to and of Possession.[2]

astical offence for a clergyman to reject, in the exercise of the rights of criticism, certain verses or parts of a canonical book of Holy Scriptures as spurious, but he cannot be permitted to reject a whole book. *Id.*

[1] Although the Court of Chancery has no jurisdiction over ecclesiastical property unaffected by a trust, yet where such property is so affected the jurisdiction of the court is complete. *Attorney General v. Hospital of St. John, Bedford*, 34 L. J. 441. In a criminal suit, the offence should, it seems, according to the 3 & 4 Vic. c. 86, s. 20, be stated to have been committed within two years. *Flamank v. Simpson*, 36 L. J. E. C. 4. In a suit against a clergyman, under 3 & 4 Vic. c. 86, as by 13 Car. 2, c. 12, s. 4, the ecclesiastical courts are forbidden to compel any person to confess, or accuse, or purge himself of any criminal matter or thing. Without the consent of the promoter, the defendant could not be examined. *Burder v. O'Neil*, 9 Jur. 1109; 9 L. T. N. S. 232,—Arches. The rule of practice in the ecclesiastical courts, which requires that a material fact should be proved by two witnesses, is not applicable to proceedings under 3 & 4 Vic. c. 86. *Id.* A promoter, who fails to prove his accusations in a criminal suit, will be condemned in the defendant's costs, unless the promoter, in the opinion of the court, was justified in carrying through the suit. *Id.* The Dean of the Court of Arches has power by the practice of the court to pronounce sentence of deprivation. *Bonwell v. London (Bishop)*, 14 Moore, P. C. C. 395.

[2] The mere possession of land for less than twenty years, confers upon the possessor a *primâ facie* heritable and devisable interest in fee against all the world but the true owners, who may recover against any person whose title is founded merely on subsequent adverse possession for less than twenty years. *Asher v. Whitelock*, 25 L. J. Q. B. 17. An uncertificated bankrupt purchased premises which he had occupied, and which he continued to occupy for the purposes of his business. The assignees took possession of the bankrupt's goods, and threatened to turn him out of the premises unless he signed an attornment to them, which he did accordingly:—*Held*, that they had sufficient title to enable them to maintain the action. *Cooper v. Lands*, 14 L. T. N. S. 287,—C. P. As to satisfied terms within the 8 & 9 Vic. c. 12, see *Plant v. Taylor*, 7 H. & N. 211; 31 L. J. Ex. 289.

II. Serving of Writ and Exhibition of Interrogatories and Evidence in.[1]

III. Verdict in.[2]

IV. Execution in.[3]

V. Costs in and Proceedings in Error.[4]

VI. Between Landlord and Tenant.[5]

VII. By Devisee, Heir-at-Law, and Mortgagee.[6]

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[1] It is unnecessary on serving a writ of ejectment to read over or explain its purport or object. *Fothergill v. White*, 14 L. T. N. S. 768. A claimant has a right to interrogate a defendant, in order to discover whether he is the real defendant or not. *Sketchley v. Conolly*, 11 W. R. 573,—Q. B. And only be allowed to deliver interrogatories to the plaintiff where his affidavit discloses special circumstances which satisfy the court that justice requires it. *Pearson v. Turner*, 16 C. B. N. S. 157; 10 Jur. N. S. 731; 33 L. J. C. P. 224; 10 L. T. N. S. 461. *Stoate v. Rew*, 14 C. B. N. S. 209; 32 L. J. C. P. 160. In ejectment for forfeiture, the court will not compel a defendant to answer interrogatories, to show that he has done acts tending to the forfeiture. *Pye v. Butterfield*, 11 Jur. N. S. 220; 34 L. J. Q. B. 17. The evidence of a deceased witness is not admissible in a subsequent action unless the latter involves the same questions and between the same parties.

[2] Where a defendant appears to defend for the whole of the land, and the plaintiff at the trial proves his title to the possession of part, the verdict is to be entered for the plaintiff, for the part only to which he has succeeded. *Ailcock v. Wilshaw*, 2 El. & El. 633. *Winn v. Rose*, 36 L. J. 306, C. P.

[3] A claimant is entitled to a writ of possession, notwithstanding the lease under which he claims has expired before the time of trial, unless the defendant showed affirmatively that the claimant has no title whatever. *Gibbins v. Buckland*, 1 H. & C. 736; 9 Jur. N. S. 207; 32 L. J. Exch. 156; 8 L. T. N. S. 87.

[4] In ejectment, the court will order the person for whose benefit, and at whose instance, the action is brought, though not a party to the record, to pay costs to a successful defendant. *Mobbs v. Vandenbrand*, 10 Jur. N. S. 745; 33 L. J. Q. B. 177; 9 L. T. N. S. 760. Where a plaintiff at law brings error, and then dies, and his legal representative enters a suggestion of the death under 15 & 16 Vic. c. 76, s. 163, and continues the proceedings in error, and the judgment is affirmed, the plaintiff in error is not liable for the costs in the court below, or in error prior to his entering the suggestion. *Parker v. Tootal*, 1 L R. Ex. The court has power to order a person at whose instance and for whose benefit an ejectment was brought, though not a claimant in the writ, to pay costs to a successful defendant. *Mobbs v. Vandenbrand*, 10 Jur. N. S. 745; 33 L. J. Q. B. 177; 9 L. T. N. S. 760. *Thornton v. Wilkins*, 9 Jur. 606. Where a writ in ejectment was served on several defendants, and one of them was an infant, and he appeared by attorney, not by guardian, and judgment was recovered in default: *Held*, in error, that this was error in fact, which vitiated the judgment as to all the defendants. *Greene v. Leclerc*, Ir. 1 C. L. 457 A plaintiff in ejectment is not out of court if he do not proceed within a year after appearance entered. *Scrope v. Paddison*, 6 H. & N. 641; 30 L. J. Ex. 244. Where one of several defendants in ejectment, although he has limited his defence, according to section 174 of the Act 1852, to part only of the property claimed, is liable for the plaintiff's general costs in the cause, including such as are applicable to the other persons being made co-defendants. *Johnson v. Mill (in re Foot)*, 37 L. J. C. P. 57; 3 L. R. C. P. 22; 17 L. T. 215. Semble, the court will, under section 251, give relief in case of oppression or injustice, as where all the property for which the ejectment is brought does not depend on one title. *Id.*

[5] The court will not oblige a tenant, defending an action of ejectment, to give security for his rent and costs, unless there be an instrument in writing, binding upon both landlord and tenant. *Domvile v. Brack*, 15 Ir. C. L. Rep. 167. See *Colville v. Hall*, 14 Ir. C. L. R. 265, C. P. Giving notice to repair within three months under a special covenant does not deprive the landlord of his right to proceed on the general covenant. *Jew v. Perkins*, 16 L. T. 62; 36 L. J. Ex. 65.

[6] In ejectment by heir-at-law, claiming also under a will against parties claiming under a deed of grant, and also setting up a later will, the plaintiff undertaking, by anticipation, to prove that the deed and the later will were forgeries by an illegitimate son of the testator, who had confessed and been convicted of the forgeries, and was called as a witness to prove them:—*Held*, first, that evidence as to his pecuniary position and circumstances before and at the time of the forgeries was admissible on the part of the plaintiff. *Roupell v. Haws*, 3 F. & F. 784:—*Held*, secondly, that evidence of forgery by him of other deeds, in the course of the transaction, and in pursuance of the same design, was also admissible for the plaintiff. *Id.* Thirdly, that the onus of proof being on the defendants, who relied on the deed, proving its execution (as against the heir-at-law, who was *primâ facie* entitled to it), if the jury were not satisfied of its execution, they ought to find for the heir. *Id.* See *Roupell v. Waite*,

VIII. Security for Costs and Staying Proceedings.[1]

ELECTION. *See* as to the Doctrine of, Story's Eq. Jur. s. 1077; 2 Sug. Powers, 144; 2 Spence Eq. Jur. 586. *Miller v. Thurgood*, 33 L. J. Ch. 511. *Spread v. Morgan*, 11 H. L. C. 588. *Padbury v. Clarke*, 2 M. & G. 298.

ELECTIONS in General. *See* Churchwarden; Corporation; Overseer; Sheriff.

ELECTIONS, Parliamentary. 4 Abr. 189. (Analysis of Act 1868).[2]

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(*a*) *Appeals from Decision of Revising Barrister. See* Appeal, p. 22.

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id. 511. In ejectment by an administrator of his mother, it appeared that she had been in possession of land from 1818 until her death, and in order to rebut the presumption of a seizin in fee, the plaintiff gave secondary evidence of an assignment to his mother of the premises for the remainder of a term; but there was no evidence of the creation of a term:— *Held*, that there was evidence for the jury of a term, and that they might presume that the possession of the mother was referable to it, and not to a seizin in fee. *Metters v. Brown*, 1 H. & C. 686; 9 Jur. N. S. 416; 32 L. J. Exch. 138. A person in possession of land without title has a devisable interest, and the heir of his devisee can maintain ejectment against a person who has entered upon the land, and cannot show title or possession in any one prior to the testator. *Asher v. Whitlock*, 1 L. R. Q. B. 1. A demise by a mortgagor and a mortgagee of leasehold premises contained a proviso for re-entry by either of them, if the lessee should assign without the mortgagor's consent. After several mesne assignments with the mortgagor's consent, the premises were assigned to M.:— *Held*, that M. was not estopped from showing that the mortgagor was not the legal reversioner. *Saunders v. Merryweather*, 35 L. J. Exch. 115. In ejectment by a mortgagee against a mortgagor, the plaintiff gave in evidence a mortgage-deed, and judgment in ejectment for the mortgaged property in 1847; and showed that a paper (suggested to have been the declaration in ejectment) was in that year served on the mortgagor, and that from 1847 the mortgagor, who had till then been in possession of all the property:— *Held*, that there was no evidence of possession by the mortgagee, or of the creation of a new tenancy under him in 1847, so as to prevent the operation of the Statute of Limitations. *Locke v. Matthews* distinguished. *Thorp v. Facey*, 35 L. J. C. P. See *Ford v. Ager*, 2 H. & C. 279; 32 L. J. Ex. 279; 9 Jur. N. S. 804; 32 L. J. Exch. 269; 8 L. T. N. S. 546.

[1] A plaintiff having brought an ejectment, against the defendant, a Chancery suit was substituted by arrangement between the parties, and subsequently the bill in equity was dismissed. After this the plaintiff brought a second ejectment against the defendant:— *Held*, that he might be called upon to give security for costs under Act 1854, s. 93, the first action of ejectment not having been successfully prosecuted. *Skene v. Davis*, 14 L. T. N. S. 622,—Q. B. Where the heir-at-law commenced two actions of ejectment to try title, and applied to have the proceedings in the Court of Probate stayed till the result of the actions was known, the court refused to stay the proceedings, inasmuch as the actions of ejectment would not affect the right to the personalty. *Davis v. Devereaux*, 35 L. J. Prob. 77. Proceedings stayed till costs of a prior suit are paid. *Cobbet v. Warner*, 36 L. J. Q. B. 94.

[2] By 30 & 31 Vic. 102, every man shall, in and after the year 1868, be entitled to vote for a member or members to serve

in Parliament for a borough, who is qualified as follows:—1. Is of full age, and not subject to any legal incapacity. 2 Is on the last day of July in any year, and has during the whole of the preceding twelve calendar months, been an inhabitant occupier, as owner or tenant, of any dwelling-house within the borough. 3. Has, during the time of such occupation, been rated as an ordinary occupier in respect of the premises so occupied by him within the borough to all rates (if any) made for the relief of the poor in respect of such premises. 4. Has, on or before July 20 in the same year, *bonâ fide* paid an equal amount in the pound to that payable by other ordinary occupiers in respect of all poor rates that have become payable by him in respect of the said premises up to the preceding 5th of January. Provided that no man shall under this section be entitled to be registered as a voter by reason of his being a joint occupier of any dwelling-house. Every man shall, in and after the year 1868, be entitled to vote for a member or members to serve in Parliament in a borough, who is qualified as follows:— As a lodger has occupied in the same borough separately and as a sole tenant, for the twelve months preceding the last day of July in any year, the same lodgings, such lodgings being part of one and the same dwelling-house, and of a clear yearly value, if let unfurnished, of 10*l.* or upwards; and has resided in such lodgings during the twelve months immediately preceding the last day of July, and has claimed to be registered as a voter at the next ensuing registration of voters. Every man shall, in and after the year 1868, be entitled to vote for a member or members to serve in Parliament *for a county*, who is qualified as follows:— If seized at law or in equity of any lands or tenements of freehold, copyhold, or any other tenure whatever, for his own life, or for the life of another, or for any lives whatsoever, or for any larger estate of the clear yearly value of not less than 5*l.* over and above all rents and charges payable out of or in respect of the same, or who is entitled, either as lessee or assignee, to any lands or tenements of freehold, or of any other tenure whatever, for the unexpired residue, whatever it may be, of any term originally created for a period of not less than sixty years (whether determinable on a life or lives or not), of the clear yearly value of not less than 5*l.* over and above all rents and charges payable out of or in respect of the same. Provided that no person shall be registered as a voter under this section unless he has complied with the provisions of the 26th section of the Act of the second year of the reign of His Majesty William 4, cap. 45. Every man shall, in and after the year 1868, be entitled to vote for a member or members to serve in Parliament *for a county*, who is qualified as follows:— Is, on the last day of July in any year, and has during the twelve months immediately preceding, been the occupier, as owner or tenant, of lands or tenements within the county of the rateable value of 12*l.* or upwards, and has during the time of such occupation been rated in respect to the premises so occupied by him to all rates (if any) made for the relief of the poor in respect of the said premises; and has, on or before July 20 in the same year, paid all poor-rates that have become payable by him in respect of the said premises up to the preceding 5th of January. At a contested election for any county or borough represented by three members, no person shall vote for more than two candidates. At a contested election for the City of London no person shall vote for more than three candidates. No elector who within six months before or during any election for any county or borough shall have been retained, hired, or employed for all or any of the purposes of the election for reward by or on behalf of any candidate at such election as agent, canvasser, clerk, messenger, or in other like employment, shall be entitled to vote at such election, and if he shall so vote he shall be guilty of a misdemeanour. Notwithstanding anything in this Act contained, in the event of a vacancy in the representation of any constituency, or of a dissolution of Parliament taking place, and a writ or writs being issued, before January 1, 1869, for the election of members to serve in the present or any new Parliament, each election shall take place in the same manner in all respects as if no alteration had been made by this Act in the franchises of electors, or in the places authorised to return a member or members to serve in Parliament, with this exception, that the boroughs by this act disfranchised shall not be entitled to return members to serve in any such new Parliament. Different premises occupied in immediate succession by any person shall give the same qualification to vote as continued occupation of the same premises. In a county, where premises are in the joint occupation of several persons, and the aggregate rateable value of such premises is such as would, if divided amongst the several occupiers, confer on each a vote, then each of such joint occupiers shall be entitled to be registered and to vote at an election. Not more than two joint occupiers to be so entitled, unless they be *bonâ fide* engaged as partners carrying on a trade or business, or have derived their occupation by descent, settlement, &c. Where a poor-rate due on the 5th of January remains unpaid on the 1st of June, the overseers shall, on or before the 20th of June, caused a notice to be served on the occupier, to the effect that he will not be entitled to be placed on the borough register, unless the poor-rate be paid on or before the 20th of July. There are also provisions as to the registration of voters, and places for election and polling-places. A clause in the act provides that any Parliament in being at the demise of the crown shall not in future be determined or dissolved by such demise. Another clause enacts, with regard to the vacation of seats by the chief

I. Of the Qualification of Electors.

(A) *In General.*[1]

(B) *Qualification for Counties by reason of Estates for Life or Freehold.*[2]

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ministers of the crown on their acceptance of office, that the mere removal from one office to another in immediate succession shall not vacate the seat in Parliament. Should any writ or writs be issued for elections, whether by a dissolution of Parliament or otherwise, before the 1st of January, 1869, those elections shall take place in all respects as if no alteration had been made in the franchise, &c.

[1] Neither at common law nor by statute are women entitled to vote at elections for members of parliament. *Chorlton v. Lings*, C. P. 38; L. J. C. P. 25. *Wilson v. Salford*, *id.* 35. Equitable devisee of a term in trust not qualified. *Gainsford v. Freeman*, 35 L. J. C. P. 92. Rent-charge of 40*s.* a-year, without a power of distress, suffices. *Dodd v. Thompson*, 35 L. J. C. P. 97. The appellant was the occupier of a room in a house in S., the house consisted of six rooms; these rooms were separately and exclusively occupied by occupiers at rents varying from 2*s.* to 1*s.* 8*d.* a-week; the furniture belonged to the occupiers; the house door, staircase, and water-closet were in common; the owner did not reside on the premises, but paid for the water, &c.; 13 & 14 Vic. c. 99, had been adopted in the parish; the parish officers put the occupiers on the rate-book. The court held that the parish officers were wrong. *Stamper v. Churchwardens of Sunderland*, 3 L. J. N. C. 195. Occupation by unregistered partnerships of more than twenty persons does not confer vote. *Harris v. Amery*, 25 L. J. C. P. 89. To constitute a building within the act there is no distinction or difference between agricultural and commercial industry. *Norish v. Harris*, 35 L. J. C. P. 101. Proportion of value of building and land is not defined under 2 Wm. 4, c. 45. The claimants were freemen of the borough. They were brethren of a hospital in the town, and had been recipients of the benefits belonging to such brethren, and resident in the borough for more than six months previously to July, 1863. The hospital was under the government of charity trustees:—*Held*, not recipients of alms, within the meaning of 2 Wm. 4, c. 45, s. 36, and were entitled to be registered. *Smith*, App., *Hall*, Resp., 15 C. B. 485; 1 H. & P. 11; 33 L. J. C. P. 59; 9 Jur. N. S. 1340; 9 L. T. N. S. 413, C. P. So where a son of a pauper was summoned before justices (his name being on the list of voters for a borough), and he consented to pay 1*s.* 6*d.* a week towards his father's maintenance, which offer was accepted by the guardians, and continued to pay this sum each week that his father remained within the union, the residue of the sum necessary for his father's complete maintenance being defrayed out of the funds of the union:—*Held*, not a receipt of alms. *Trotter*, App., *Trevor*, Resp., 13 C. B. N. S. 48; 1 K. & G. 531; 9 Jur. N. S. 443; 32 L. J. C. P. 59; 7 L. T. N. S. 678. But whether obtaining medical attendance and medicine on loan from guardians of a union, under sect. 58 of the 4 & 5 Wm. 4, c. 76, is a receiving of parochial relief within 2 Wm. 4, c. 45, s. 36?, is open to further consideration. *Devenish*, App., *Digby*, Resp., 13 C. B. N. S. 28. Inmates in an eleemosynary hospital, who have an equitable estate for life in their several rooms of a sufficient amount in value, are entitled to the parliamentary franchise (affirming *Simpson v. Wilkinson*, 7 Man. & Gr. 50). *See Roberts v. Percival*, C. P.; 11 Jur. N. S. 40. But where the inmates have no fixed right to their particular rooms and the legal estate of the charity property is in trustees, who are to make certain pecuniary allowances to the inmates, the inmates have no freehold at law or in equity, and are not entitled to the franchise. *Steele v. Bosworth*, C. P.; 13 Jur. N. S. 1239. The building referred to in 2 Wm. 4, c. 45, s. 27, granting the right of voting to occupiers of any building, must be a building of some permanence, and of real value; but when held with land, although the value may be trifling, it will be sufficient to qualify if it adds to the *bonâ fide* value of the whole. *Norris*, App., *Harris*, Resp., 1 H. & R. 358; 1 H. & P. 305; 1 L. R. C. P. 155; 35 L. J. C. P. 101; 14 L. T. N. S. 764. A stone building, worth about 10*s.* per annum, consisting of a roof and three sides, the fourth side being open, used by the claimant for milking his cows in and storing his hay, is a building. *Gilham*, App., *Harris*, Resp., 1 H. & R. 358; 1 H. & P. 308; 13 L. T. N. S. 763. A proprietor of shares in a music-hall, the legal estate in which is vested in trustees, and who is entitled to a share of the profits, but not to any specified portion of the property of the company, is not entitled to the franchise. *Freeman v. Gainsford*, C. P.; 11 Jur. 116. *See Tipper v. Nichols*, 11 Jur. N. S. 18, C. P.

[2] A freehold rent-charge issuing out of freehold land is a "freehold tenement" within the meaning of 8 Hen. 6, c. 7, although the deed creating it gives no power of distress, which, however, is given by 4 Geo. 2, c. 28, s. 5. *Dodds v. Thompson*, 1 L. R. C. P. 133; 35 L. J. 97. A claimant was possessed of a share in a corn exchange company. The land on which the corn exchange was built was freehold, and was vested in trustees. The income was derived from letting offices and cellars beneath, and stands and stalls in the exchange. The claimant's interest

(C) *Qualification in respect of Estates not being Freeholds, Leaseholds, and Copyholds.*[1]

(D) *Qualification to Vote in City or Borough.*[2]

was of the clear yearly value of 40*s*. The company was registered under 7 & 8 Vic. c. 110, s. 58:—*Held*, that the claimant had not a freehold interest in land in respect of his share in the company. *Bennett*, App., *Blain*, Resp., 15 C. B. N. S. 518; 1 H. & P. 35; 10 Jur. N. S. 130; 33 L. J. C. P. 63; 9 L. T. 506. Claimant occupied a house and land as tenant of A. at a rent of 40*l*. per annum. He also occupied from a subsequent date other lands, jointly with his father, as tenants of A. at a rent of 64*l*. per annum, claimant's share of rent being 32*l*. per annum:—*Held*, that the claimant could not take the rents so as either to be entitled to vote under the 20th sec. of 2 Wm. 4, c 45, or the 73rd sec. of 6 & 7 Vic. c. 18. *Smith v. Foreman*, C. P.; 11 Jur. N. S. 42. A trustee entitled to pay himself 40*s*. a-year out of the rents and profits issuing from all the trust lands, part of which is in his actual occupation, has no power to make such annuity issue only out of the rents and profits of that part which he occupies for the purpose of obtaining a qualification to vote; but the 40*s*. must be apportioned between the land so occupied by him and the rest of the other lands. *Mills v. Cobb*, 37 L. J. C. P. 75. *Roberts v. Drewitt*, C. P; 18 C. B. N. S. 48. A claimant was owner of an allotment of land mortgaged to a building society for 73*l*., payable by monthly instalments. On the 1st of January, 1863, he had paid off 71*l*., and in July, 1863, he had paid off the remaining 2*l*. The land was of the annual value of 3*l*.:—*Held*, that the claimant had, on the 1st of January, a freehold interest in land of the annual value of 40*s*., and was therefore entitled to be registered as a county voter. *Robinson*, App., *Dunckney*, Resp., 13 C. B. 478; 9 Jur. N. S. 1342; 9 L. T. N. S. 481; 33 L. J. C. P. 57. Where land is vested in commissioners for public purposes, they have no power to convey away any part of such land, so as to entitle grantee to vote. *Tepper*, App., *Nicholls*, Resp., 11 L. T. N. S. 509, C. P. As to inmates of an hospital, *see Steele v. Bosworth*, 10 Jur. 1239.

[1] The voter's qualification was described in the list as "leasehold house and garden." The voter held the property under a lease to him for life, and if he died within sixty years, then for the remainder of sixty years:—*Held*, that the description was sufficient. *Jones v. Jones*, 38 L. J. C. P. 43. A tenant who holds his lands by customary tenure, although not strictly a copyhold, provided he has a permanent interest therein of the value of not less than 10*l*. per annum, free of all charges, is entitled to be registered under sec. 29 of 2 Wm. 4, c. 45. *Garbutt v. Trevor*, 9 L. T. N. S. 535, C. P; 15 C. B. N. S. 550; 1 H. & P. 69; 10 Jur. N. S. 181; 33 L. J. C. P. 71, 73. A freehold rent-charge issuing out of freehold land is a "freehold tenement" within the meaning of 8 Hen. 6, c. 7, although the deed creating it gives no power of distress, which, however, is given by 4 Geo. 2, c. 28, s. 5. *Dodds v. Thompson*, 1 L. R. C. P. 133; 35 L. J. 97. To entitle the grantee of a rent-charge to be placed on the list of voters he must show that he has received a gale thereof under the grant six months prior to the 20th July preceding the revision of the list of voters. *Carrol v. Barry*, 15 Ir. Com. Law Rep. 373. The owner of leaseholds, the original term in which was more than sixty years, bequeathed them to trustees, upon trust to pay the rents and profits to J. for life, remainder to his children:—*Held*, that J. was not an assignee for the unexpired residue of the term, and that he was not entitled to be on the list of voters. *Gainsford v. Freeman*, 1 L. R. C. P. 129; 35 L. J. 92. Forty-six persons entered into a partnership for farming purposes (not being registered under the Companies' Act), and rented a farm and farm building, one of their number alone occupying:—*Held*, that the partnership was illegal, farming being a "business" within the act, and that as a constructive occupancy could only be established by the illegal partnership deed, the partners not in possession were not entitled to be on the list of voters. *Harris v. Amery*, 1 L. R. C. P. 148; 35 L. J. 89. A person entitled under the 2 Wm. 4, c. 45, s. 20, to the county franchise in respect of his leasehold interest in a house in a borough which, before 30 & 31 Vic. c. 102, conferred no vote for the borough, loses his right to such franchise upon his tenant acquiring, under 30 & 31 Vic. c. 102, s. 3, a borough vote in respect of such house. *Chorlton v. Johnson* (*Bunting's case*), 38 L. J. C. P. 37.

[2] The occupation of part of a house may confer a right to vote for a city or borough, if there is an independent occupation and actual severance from the rest. *Henrette*, App., *Booth*, Resp., 15 C. B. N. S. 500; 1 H. & P. 23; 9 Jur. N. S. 1293; 33 L. J. C. P. 61. *Wilson v. Roberts*, 31 L. J. C. P. 78; 11 C. B. 50. *Cooke v. Humber*, 31 L. J. C. P. 73. A voter need not have been of full age during the whole period of twelve months' residence previous to the 31st of July, required by the 27th sec. of the 2 Wm. 4, c. 45. *Powell*, App., *Bradley*, Resp., 10 Jur. N. S. 1240, C. P. A claimant was imprisoned for six months previously to the 31st July, for misdemeanour, and was confined in a gaol more than seven miles from the borough:—*Held*, that Se had not resided within the borough for twelve months before the 31st July. *Powell*, App., *Guest*, Resp., 10 Jur. N. S. 1238, C. P. In a borough in which freemen by birth were entitled to vote prior to the Reform Act, the

II. Of the Registration of Voters and Proceedings connected therewith.[1]

right is preserved by sec. 32, not only to those whose fathers were entitled to their freedom previously to the 31st March, 1831, but to the lineal descendants of all persons entitled to their freedom before that day. *Gaydon*, App., *Pencraft*, Resp., 18 C. B. N. S. 11; 1 H. & P. 97; 34 L. J. C. P. 53; 13 W. R. 267. The claimant went into possession of the qualifying premises prior to August, 1863, but subsequent to the making of a poor-rate in the previous April. The proportion of the rate was never demanded from him, and his name was not inserted in that rate:—*Held*, that this was not a rate which had "become payable from him" within the disqualifying proviso of sec. 27 of 2 & 3 Wm. 4, c. 45, although the claimant was liable to pay a proportion of the rate under 17 Geo. 2, when that proportion should be ascertained. Dissentiente Williams, J. *Flatcher v. Boodle*, C. P.; 11 Jur. N. S. 67. A poor-rate to be a rate within 30 & 31 Vic. c. 102, s. 3, must be both signed by the overseer and allowed by the justices within the year of occupation. *Jones v. Bubb*, 38 L. J. C. P. 57. *Ainsworth v. Creeke*, *id.* 58. As to "Compositions," *see Trotter v. Theror*, *id.* 51. The primary qualification for a borough vote is a building, though if not of the annual value of 10*l.* the land may be counted in the value. A wooden roofed-in shed erected on a portion of a farm within a borough by an electioneering agent, without the consent of the landlord, and which the tenant used for keeping agricultural implements:—*Held*, not to be such a building as came within the section. *Powell v. Boraston*, C. P.; 11 Jur. N. S. 160. *Powell v. Farmer*, C. P.; 11 Jur. N. S. 162. Where a building occupied with land is of a permanent nature, and useful for the occupation of the land on which it stands, and *bonâ fide* adds to its real value, though in a small degree, it is a building within the statute. *Morish v. Harris*, 1 L. R. C. P. 155; 35 L. J. 101. Under the act of 1832 it was held in *Cook v. Hunter*, 31 L. J. C. P. 54, that part of a house could not confer the franchise unless there was a complete severance in fact between it and the remainder of the house. In *Cuthkedon v. Butterworth*, 3 L. J. N. 262, it was decided that a room in a set of chambers was not a separate dwelling, within the act of 1867. The word "composition" in 30 & 31 Vic. c. 102, s. 7, proviso (1.) applies not only to the case of an owner paying less than the full amount of the poor-rates by agreement, but also to the case where he pays a less amount simply by order of the vestry under the Small Tenements' Act. *Trotter v. Trevor*, and *Hanks v. Jones*, 38 L. J. C. P. 51. *See Mason v. Bennett*, *id.* 48, as to rating owner instead of occupier.

In the notice of objection to a borough voter, as not being entitled to have his name retained on the list of voters, the objector must give his place of abode. *Thackway*, App., *Pilcher*, Resp., 15 W. R. 223, C. P.; 35 L. J. C. P. 73. Whether such place of abode is sufficiently described is a question of fact, on which the finding of the barrister is conclusive. *Id.* Where the description of the place of abode was that given in the list of voters, and by which the objector might easily be found, though he might be found more easily by a fuller one, it is sufficient. *Id.* It is not essential to the validity of a notice of objection to a county vote that it should bear the exact date on which it was signed. It is sufficient if it be dated on any day on which the objector is qualified to object, and within the period allowed for making objections. *Jones v. Jones*, 1 L. R. C. P. 140; 35 L. J. 94. There is a sufficient signature within the 6 Vic. c. 18, s. 17, if the objector stamps on the notice of objection a fac-simile of his signature. *Bennett v. Brumfitt*, 37 L. J. C. P. 25. Whether the object of the statute, in requiring a signature to a notice of objection, was merely to authenticate the document, or whether it was to give information to the objectee and to the revising barrister, a signature is sufficient. *Trotter*, App., *Walker*, Resp. (*Hallam, In re*); *Sedgwick*, App., *Trevor*, Resp., 1 K. & G. 534; 13 C. B. N. S. 30; 9 Jur. N. S. 603; 32 L. J. C. P. 60. *Force*, App., *Flood*, Resp., 12 W. R. 174; 9 L. T. N. S. 508, C. P. Where there is more than one list of voters for a parish or borough, a person objecting to the vote of another must, in his notice of objection, state in which list his (the objector's) name is to be found. *Crowther*, App., *Bradney*, Resp., 12 W. R. 176; 9 L. T. N. S. 44, C. P. Notice of objection served on 12th, but signed on 18th August, good. *Jones v. Jones*, 35 L. J. C. P. 94. Notice to overseers may comprise names of several persons on list. *Smith v. Holloway*, 35 L. J. C. P. 100. When two revising barristers are appointed for the same county, city, or borough, under 6 & 7 Vic. c. 18, s. 29, it is not competent for one barrister to rehear and decide upon a case which has been heard and finally determined by his colleague. *Blain*, App., *Pilkington* (*Overseers*), Resp., 18 C. B. N. S. 6; 1 H. & P. 92; 34 L. J. C. P. 55; 13 W. R. 269. The notice of objection to an occupier of a tenement of the rateable value of 12*l.*, put on the list of voters by the overseers, must state the grounds of objection. *Bennett v. Brumfitt* (*Alderson's case*), 34 L. J. C. P. 63. *See* also *Charlton v. Johnson*, *id.* 39. The duplicate notice of objection, stamped by the postmaster, pursuant to the 6 & 7 Vic. c. 18, s. 100, produced before the revising barrister, had written at the top of it the word "copy:"—*Held*, that (assuming that the word "copy" was not on the notice transmitted by the postmaster to the person objected to) the notice was well served. *Benesh*, App., *Booth*, Resp., 18 C. B. N. S. 111; 1 H. & P. 223; 34 L. J. C. P. 99. Where notice of objection to a name has been given, the objector

(A) *Objection to Voter.*[1]

has no right of his own accord to withdraw, and the revising barrister must require the voter's qualification to be proved, and he has no jurisdiction to inquire whether the objector has or has not previously withdrawn his notice of objection. *Proudfoot v. Barnes*, 37 L. J. 2 C. P. 88; C. P. 68. Party's ordinary way of signing suffices, though it is scarcely legible. In the parish of St. B. there are two lists of voters for the borough, called "the ten-pound list, or new qualification list," and "the reserved right list." A notice of objection described the objector, who was on the new qualification list, as being "on the list of voters for the parish of St. P.":—*Held*, sufficient. *Samuel*, App., *Hitchmough*, Resp., 1 K. & G. 522; 13 C. B. N. S. 3; 9 Jur. N. S. 414; 32 L. J. C. P. 55; 7 L. T. N. S. 360. Where a city voter's place of abode is described in the list with the parish in which it is situate, but not the city or county, the addition of the city and county to such described place of abode in the address of a notice of objection sent by the post to such voter, does not prevent the notice from being in compliance with sec. 109 of the 6 & 7 Vic. c. 18. *Cotton v. Prall*, 37 L. J. C. P. 67. Where a person is on the list of voters, and the qualification is good on the face of it, the revising barrister has no power to strike his name off the list, although the same qualification has been held by this court to be bad, unless the vote be regularly objected to by a properly qualified person. *Smith v. James*, 1 L. R. C. P. 138.

[1] If the qualification of a voter is good on the face of the register, the revising barrister has no power to strike out such voter's name, on the ground that the qualification is insufficient in law, unless the retention of the name on the list has been duly objected to. *Smith*, App., *James*, Resp., 1 H. & R. 338; 1 H. & P. 317; 1 L. R. C. P. 133; 12 Jur. N. S. 125; 14 W. R. 201. A notice of objection was as follows:—"To Mr. Sidney Rice Force. I hereby give you notice, that I object to the name of Force Sidney Rice being retained, &c.":—*Held*, that the voter was sufficiently described, and if not, that the inaccuracy was cured by the 101st sec. of the 6 & 7 Vic. c. 18. *Force*, App., *Floud*, Resp., 15 C. B. N. S. 543; 1 H. & P. 56; 10 Jur. N. S. 134. Where there are two lists of voters for a borough, a notice of objection should distinctly state on which list the objector's name appears. *Crowther*, App., *Bradney*, Resp., 15 C. B. N. S. 536; 1 H. & P. 63; 33 L. J. C. P. 70. *Cram*, App., *Cole*, Resp., 10 Jur. N. S. 1206; 11 L. T. N. S. 451. But *see Bright v. Devenish*, 37 L. J. 71. C. P. In a claim to be inserted in the list of voters for a borough, the qualifying property was described as "House, Ely Place." The claim was objected to on the ground that the houses in Ely Place were numbered, but that claimant had not entered the number. The claimant satisfied the revising barrister that the number of the house was 16; and, on his application, the claim was amended by adding the number, and he was entered on the list:—*Held*, this was a case for amendment within sec. 40, following *Flounders v. Donner*, 2 C. B. 63. *Barlow v. Mumford*, 1 L. R. 2 C. P. 81; 35 L. J. 65. In the third column of a claimant's claim to vote for a county, under the head "nature of qualification," was entered "tenant."—*Held*, that it being not certain that this was not of itself sufficient to designate a person who claimed as occupying tenant, the revising barrister was authorised in amending, for the purpose of more clearly defining the qualification, by the change of "farm, as occupying tenant," for "tenant." *Birks*, App., *Allison*, Resp., 1 K. & G. 507; 13 C. B. N. S. 24; 9 Jur. N. S. 692; 32 L. J. C. P. 51; 7 L. T. N. S. 786. Where the qualification of a claimant to a borough vote consists of a house which is numbered, and the number has been omitted in the claim, the revising barrister has power, under sec. 40 of 6 & 7 Vic. c. 18, to amend the claim by adding the omitted number of the house, if the omission be supplied to his satisfaction before completing the revision of the list. *Barlow v. Mumford*, 37 L. J. C. P. 65. *Blain*, App., *Pilkington*, Resp., 10 Jur. N. S. 1237; 11 L. T. N. S. 452, C. P. Rate made for the relief of the poor in s. 3 of 30 & 31 Vic. c. 102, means both signed by the overseers and allowed by the justices within the requisite year of occupation. *Jones v. Buff*, 3 L. J. C. P. 261. *Ainsworth v. Creeke*, *id.* 262. The borough of D. consisted of two parishes, S. and E., each having separate lists of voters; that for E. was headed "List of persons entitled to vote for the borough of D. in respect of property occupied within the township of E." The objector to a vote described himself in the notice as of "69 D. Street, on the list of voters for the borough of D. and township of E.":—*Held*, the notice was sufficient. *Oram v. Cole*, C. P; 34 L. J. N. S. 52. The notice of objection to be served on the overseers under this section (Schedule A. No. 4), may comprise more names than one; and a notice of objection "to the names of the persons mentioned and described below," followed by a schedule of twenty-nine names, with their descriptions and qualifications as on the list of voters, was *held* a sufficient notice. *Smith v. Holloway*, 1 L. R. C. P. 145; 35 L. J. 100. *Tudball v. Town Clerk of Bristol*, 5 M. & G. 5; 33 L. J. C. P. 49. *Bright v. Devenish*, L. R. 2 C. P. 102; 36 L. J. 71. It is not essential to the validity of a notice of objection to a county vote that it should bear the exact date on which it was signed. It is sufficient if it be dated on any day on which the objector is qualified to object, and within the period allowed for making objections. *Jones v. Jones*, 1 L. R. C. P. 140; 35 L. J. 94.

III. Of Bribery and Corrupt Practices.[1] 31 & 32 Vic. c. 125, to be cited as the Parliamentary Elections Act, 1868; Reg. Gen. 1868, 37 L. J. N. S. 1–7; as to Expenses of Commissioners, 32 & 33 Vic. c. 21.

ELECTRIC Telegraph.[2] 4 Ab. 224.

EMBEZZLEMENT.

I. Embezzlement by Clerks or Servants.

(A) *What constitutes.*[3]

(B) *Indictment.*[4]

II. Embezzlement by Persons in Public Employments or connected with Public Institutions.[5]

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[1] Proof of an authority to hire cars to carry voters, and to employ persons to canvass at a contested election, will not supply evidence of an implied authority to open a public-house or order refreshments for persons present at the election. *Byrne v. White*, 17 W. R. 1,—Ir. Exch.

[2] As to the construction and maintenance of telegraphs, see 26 & 27 Vic. c. 112. As to Post-Master General acquiring, see 31 & 32 Vic. c. 10. It seems that a telegram if properly identified is equivalent to a letter. *Coupland v. Arrowsmith*, 18 L. T. 755. The 7 & 8 Vic. c. 85, s. 13, requires the electric telegraphs for the service of the public; and by s. 14 they are to be open to the public. As to the right of placing pipes, &c., *see Reg. v. United Kingdom E. T. Co.* 31 L. J. M. C. 166, and 9 Ex. R. 363; 23 L. J. Ex. 113; and as to libel by *see Whitfield v. S. E. Railway*, 27 L. J. Q. B. 229. In the case of *Playford v. The United Kingdom Telegraph Co.* which was an action by the receiver of a telegram for damage sustained by a mistake in it, the court suggested that a special case should be drawn so that the points might be more fully raised for their decision. But thought that a count setting up a contract between the company and the receiver failed for want of privity, and that the count founded on public duty of the company also failed, though the plaintiff might recover on a count setting up a contract.

[3] A. was indicted for embezzlement whilst clerk to B. and others. A. was secretary and cashier to the company calling themselves "The R., M., and H. Coal Company (Limited);" the number of members exceeded twenty; the name of the company was over the door; the shares were transferable without the consent of the other shareholders; and a minute-book, in which resolutions were entered, was kept. No certificate of incorporation was put in evidence:—*Held*, that he was rightly convicted as the servant of B. and others, there being no evidence which ought to have been left to the jury that the company was incorporated. *Reg. v. Frankland*, 1 L. & C. C. C. 276; 9 Cox, C. C. 273; 9 Jur. N. S. 388; 32 L. J. M. C. 69. A commission agent, not receiving a salary, who is employed to get orders and receive money, but who is at liberty to get those orders and receive that money where and when he thinks proper, is not a clerk or servant within the 24 & 25 Vic. c. 96, s. 68. If such a person be at liberty to get, or abstain from getting, orders when he chooses, this liberty is inconsistent with the relation of master and servant. *Reg. v. Bowers*, 35 L. J. M. C. 205. *See* also *Reg. v. Walker*, Dears & B. C. C. 600; 27 L. J. M. C. 207; and *Reg. v. May*, Leigh & Cave, C. C. 13; 30 L. J. M. C. 81. *See Reg. v. Tite*, 30 L. J. M. C. 142. *The Queen v. Bowers*, 35 L. J. M. C. 206; 12 Jur. 380; 1 L. R. C. C. R. 29.

[4] On an indictment for embezzling money, the prisoner was proved to have received a cheque for his employer, but he was not proved to have turned it into money: the conviction quashed. *Reg. v. Keena*, L. R. 1 C. C. R. 113; 37 L. J. M. C. 43; 17 L. T. 515.

[5] A bailiff of a county court who has fraudulently appropriated the proceeds of levies made under the process of the county court, cannot for this misconduct be convicted on an indictment as a servant of the high bailiff with having embezzled the monies of the high bailiff his master. *Reg. v. Glover*, 1 L. & C. C. C. 466; 9 Cox. C. C. 500; 10 Jur. N. S. 710; 33 L. J. M. C. 169; 10 L. T. N. S. 582. An assistant overseer who receives rates, and duly enters them as received, but instead of paying them to the bankers fraudulently appropriates the money to his own use, *held* guilty of embezzlement. *Reg. v. Guelder*, 30 L. J. M. C. 34. An assistant overseer, nominated and elected under 59 Geo. 3, c. 12, s. 7, by the inhabitants in vestry, and duly appointed, whose duties were declared to be "such as appertain and are incident to the office of an overseer," is well described in an indictment for embezzlement of poor-rates as the servant of the inhabitants of the parish. *Reg. v. Carpenter*, 1 L. R. C. C. R. 29; 35 L. J. M. C. 169; 10 Cox, C. C. 246. Two friendly societies appointed a committee, of which the defendant was a member, to conduct an excursion; the committee employed him and several others to sell tickets. It was his duty to pay over the money so received, which was to belong to the two societies, to a person appointed by the committee, but he received no remuneration for his services:—*Held*, that he was a joint owner of

III. As to Searching for Materials, &c., Embezzled.[1]

EMBLEMENTS. 4 Ab. 241, as to Emblements on determination of Leases under Tenant for Life. *See* 14 & 15 Vic. c. 25.

ENCROACHMENT.[2] 4 Ab. 341.

ENFRANCHISEMENT. 3 Abr. 232. *See* Copyhold.

ENGRAVING Plates to make Bank Notes. *See* 24 & 25 Vic. c. 28, ss. 16, 17; *post*, Forgery.

ENGRAVINGS, Copyright in. *See* 8 Geo. 2, c. 13; 1 Geo. 3, c. 38; 17 Geo. 3, c. 57; 6 & 7 Wm. 4, c. 59; and tit. Copyright.

EQUITABLE Jurisdiction County Courts. *See* County Courts.

EQUITABLE Pleas and Replication.[3] 4 Abr. 242.

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the money, and not a clerk or servant within 24 & 25 Vic. c. 96, s. 68, liable to be indicted for embezzlement. *Reg. v. Bren*, 1 L. & C. C. C. 346; 9 L. T. N. S. 452; 33 L. J. M. C. 59. *See Reg. v. Marsh*, 37 L. J. 523. *Reg. v. Macdonald*, 31 L. J. M. C. 67. A. was secretary to a benefit building society. It was no part of his duty, as prescribed by the rules, to receive money for the society; but, according to the course of business, the subscriptions were frequently received by him, and when mortgages were redeemed the money was paid to him as secretary, but for and upon receipts signed by the trustees. Having embezzled the redemption money upon a mortgage so paid to him, he was indicted under 7 & 8 Geo. 4, c. 29, s. 47:—*Held*, that there was evidence for the jury that he was employed by the trustees as their servant to receive money on their behalf. *Reg. v. Hastie*, or *Hartie*, 9 Cox, C. C. 264; 1 L. & C. C. C. 269; 9 Jur. N. S. 235; 32 L. J. M. C. 63; 11 W. R. 293; 7 L. T. N. S. 695. *See Reg. v. Tongue*, 32 L. J. M. C. 63. Lush, J. at the spring assizes, 1868, said that "Although it had been held that trade societies were not within the protection of the Friendly Societies' Act, and, therefore, could not avail themselves of the special remedies given by that Act, they were in no sense illegal societies, and their property as well as their persons were as much protected as the property and the persons of any other society."

[1] By sec. 10 of 17 Geo. 3, c. 56, two justices, upon complaint made to them upon oath that there is cause to suspect that purloined or embezzled materials, used in certain manufactures, are concealed in any dwelling-house, outhouse, yard, garden, or other place or places, may issue a search-warrant for the search:—*Held*, that a warehouse occupied for business purposes only, and not within the curtilage of or connected with any dwelling-house, was a place within the meaning of the section. *Reg. v. Edmundson*, 2 El. & El. 77.

[2] The presumption of law that the possession by a tenant of a piece of land lying between the land of which he is tenant and the high-road is as tenant of his landlord, does not apply where it is shown that the lessee was in possession of the piece of land before he became lessee, and had never paid rent for it. The original adverse possession would continue, in the absence of circumstances to prove the contrary. *Dixon v. Baty*, 1 L. R. Ex. 259. The presumption is not rebutted by the fact that the land taken by encroachment is separated by a brook from that which the tenant occupies; for, in order to fall within the rule, it needs not be immediately adjacent; it is sufficient for it to be near. *Lisburne (Earl) v. Davies*, 1 L. R. C. P. 259; 12 Jur. N. S. 340; 35 L. J. C. P. 193; 14 W. R. 333; 13 L. T. N. S. 705.

[3] An equitable plea makes the subsequent pleading equitable, though not so pleaded. *Salvin v. Hoylake Railway Company*, 1 L. R. Ex. 9. A plea pleaded as an equitable defence may be sustained as a plea at law if it discloses a good legal answer. *Hyde v. Graham*, 1 H. & C. 593; 32 L. J. Ex. 27 Where a defendant at law pleads an equitable plea, a court of equity will not interfere by injunction to restrain an action on grounds identical with those averred in the plea, if the court of law can give the same relief as a court of equity. *Waterlow v. Bacon*, 2 L. R. Eq. 514; 12 Jur. N. S. 614; 35 L. J. Ch. 643. The principle of law that an equitable plea will only hold good where a court of equity would grant a perpetual "unconditional" injunction, means unconditional so long as the circumstances of the plaintiff remain the same. *Wakley v. Froggatt*, 2 H. & C. 649. *Jeffs v. Day*, 1 L. R. Q. B. 372; 35 L. J. 99. Therefore such a plea to an action for debt, that, after the accruing of plaintiff's claim, and before suit, defendant was adjudicated bankrupt, and after the commencement of the suit, but before declaration, one of the plaintiffs was appointed assignee of defendant's estate, and plaintiffs proved their debt under the bankruptcy, and elected to take the benefit of the petition, was held bad. *Spencer v. Demett*, 35 L. J. C. M. R. 73. To a declaration for

ERROR.[1] 4 Abr. 246.

ESCAPE.[2] *Id.* 263.

not accepting the residue of certain goods, and for non-payment of the goods, a plea that the contract did not relate to any specific goods, and was contained in bought and sold notes, signed by certain brokers for the plaintiff and defendant; that just before the contract was put into writing, and on the negotiation for the same, it was verbally agreed that the goods should agree with the sample; that the brokers were authorised to put the verbal contract into writing, but that they omitted to state that the goods were to agree with the sample; that the defendant, as soon as he discovered the omission, gave the plaintiff notice of his refusal to be any longer bound by the contract:—*Held*, a good equitable plea. *Borrowman v. Rossel*, 10 Jur. N. S. 679; 33 L. J. C. P. 111; 16 C. P. N. S. 58; 10 L. T. 236. *See Davis v. Nesbitt*, 31 L. J. C. P. 6. *Lawrence v. Walmsley*, *id.* C. P. 143. To count for cutting down and carrying away timber growing on the plaintiff's land the defendant pleaded, for defence on equitable grounds, that the person who devised the land to the plaintiff had, by parol agreement, sold certain timber growing thereon to the defendant, with liberty for him to go on the land from time to time to cut it down and carry it away, paying for it as he took it; and that the defendant had, during the lifetime of testator, cut down, carried away and paid for a portion of the timber sold, and that the trespass was committed in further pursuance of the agreement:—*Held*, that the plea was bad, on the ground that a court of law could not do final justice between the parties. *Wakley v. Froggatt*, 33 L. J. Ex. 5; 2 H. & C. 669. *See Rogers v. Hadley*, 32 L. J. Ex. 241; 9 Jur. N. S. 898; 9 L. T. N. S. 292. *Drake v. Pywell*, 4 H. &. C 76; 13 L. T. N. S. 714. A party to an action will not be allowed to plead, on equitable grounds, facts which he has, pending the action, set up in a court of equity as entitling him to relief, in a proceeding instituted there with reference to the subject-matter of the action. *Schlumberger v. Lister*, 2 El. & El. 855. As to an equitable set-off, *see Elkin v. Baker*, 31 L. J. C. P. 177. *Wakeham v. Crow*, 15 C. B. 75. *Wilson v. Gabriel*, 4 B. & S. 243. To a declaration on a charter-party, alleging as a breach a refusal by the defendants to load a cargo, they pleaded as an equitable defence that they entered into the charter-party solely as agents for A., D. and Co., and that when they signed the charter-party it was agreed and understood between the plaintiff and the defendants they were only to sign the charter as such agents, so as to bind A., D. and Co., and were not to make themselves liable as principals for the performance of the charter:—*Held*, that the plea showed a good equitable answer to the action. *Wake v. Harrop*, 1 H. & C. 202, Ex. Ch. *Billing v. The East India Company*, 31 L. J. Ex. 240. A replication to an equitable plea is a replication on equitable grounds, though not so entitled. *Savin v. Hoylake Railway Company*, 1 L. R. Ex. 9.

[1] Error will lie on a special case stated in an interpleader issue. *Gumm v. Tyne*, 34 L. J. C. B. 124; 6 B. & S. 298. Irregularities in the proceedings before judgment cannot be assigned as error in fact, and a party is precluded from assigning as error in fact, which is at variance with the record, nor does error lie to the Ex. Ch. or House of Lords on error in fact, unless the objection appears on the face of the record. *Trevers v. Grey*, 36 L. J. C. P. H. L. 148; 2 H. L. 20; 1 L. R. C. P. 171 The plaintiff in an action of ejectment died after bringing error. His devisee entered a suggestion of the death under section 163 of the Common Law Procedure Act, 1858, and continued the proceedings in error. The judgment of the court below was subsequently affirmed by the Court of Exchequer Chamber and the House of Lords:—*Held*, that the devisee was not liable to the costs in the court below; the Common Law Procedure Act, 1852, being intended only to simplify proceedings in error, and not to impose any liability to costs where it did not previously exist. *Parker v. Tootal*, 35 L. J. Ex. 53; 1 L. R. Ex. 105. A judge at chambers having in the exercise of his discretion dispensed with bail on appeal, on the ground that the question to be determined was a doubtful one, and had been decided by the court in deference to a single authority, the court refused to set aside his order. *Turquand v. Moss*, 17 C. B. N. S. 24. The court or a judge has a discretion to dispense with bail on appeal, as well as with bail in error. *Bevan v. Whitmore*, 15 C. B. N. S. 442. The representative of a deceased plaintiff who takes up an action in error, does not render himself liable to the costs of the action below. *Parker v, Tootal*, 11 Jur. N. S. 980; 13 L. T. N. S. 378, Ex. Where, after error assigned, a suggestion of the death of the original plaintiff was entered upon the record by his specific devisee, who continued the proceeding in error to judgment, by which the judgment of the court below for the defendant was affirmed:—*Held*, that the suggestor was not liable for the costs incurred in the action in the court below. *Parker v. Tootal*, 11 Jur. N. S. 980; 13 L. T. N. S. 378; 1 L. R. Ex. 41. As to whether security for costs will be ordered, *see Reg. v. Commissioners of Southampton*, 6 B. & S. 407.

[2] The production to the sheriff of the certificate of the Chief Registrar in Bankruptcy of the filing and registration of a deed under 24 & 25 Vic. c. 134, is a sufficient answer to an action of escape; although it may turn out that the deed is invalid.

ESCHEAT.[1] 4 Abr. 267.

ESTATES. 4 Ab. 268. *See* Executors and Administrators; Tenants in Common; Grant.

ESTOPPEL. 4 Ab. 280. *See* also Patent.

I. By Matter of Record and Legal Proceedings.[2]

II. By Deed, by Conduct of Parties, and Acts in Pais.[3]

Lloyd v. Harrison, Ex. Ch.; L. R. 1 Q. B. 502; 35 L. J. 153; 6 B. & S. 36; 14 L. T. 390. In an action for the escape of a judgment debtor, the true measure of damages is the value of the custody at the moment of escape; and that value may be estimated, not only by the actual resources of the debtor, but by other facts proved in evidence, showing a probability of payment being obtained through pressure of imprisonment. *Macrae v. Clarke*, 1 H. & R. 479; 12 Jur. 408; 1 L. R. C. P. 403; 35 L. J. 247. The protection of the certificate of registration under section 198 of the Bankruptcy Act, 1861, does not extend to process in respect of debts accruing due after the date of the registration of the deed; and, therefore, a sheriff is liable in an action for an escape, if he discharge a debtor on the production of a certificate bearing date prior to the date of the judgment on which the debtor was arrested. *Williams v. Rose*, 37 L. J. Ex. 12.

[1] A court of equity, under its common-law jurisdiction, it seems has power to give liberty to traverse an inquisition of escheat, and to quash the finding. *Parry, In re, ex parte Beaufort (Duke of)*, 12 Jur. N. S. 699, V. C. S.

[2] Where the recovery of a judgment by one of several joint contractors in an action against him is pleaded by the others, as a defence to a subsequent action against them in respect of the same matter, the plea, to be good, must show that the judgment was obtained on grounds of defence open to all the joint contractors. *Phillips v. Ward*, 2 H. & C. 717; 9 Jur. N. S. 1182; 33 L. J. Ex. 7; 9 L. T. N. S. 345. But the verdict and judgment upon an inquisition under the Lands Clauses Act, do not estop the company, in an action upon the judgment, from denying that the lands in respect of which the damage has been assessed, and the plaintiff's interest therein, were damaged and injuriously affected by their works. But where the damages claimed and awarded exceed 50*l.* the company is estopped from denying that the claimant is entitled to compensation to an amount exceeding 50*l.* *Read v. Victoria Station and Pimlico Railway Company*, 1 H. & C. 826. By a canal act commissioners were appointed for "settling and adjusting" all questions and differences between the company and the owners of lands prejudiced; and the amount of compensation was to be assessed by a jury, and the commissioners were to give judgment for the sum so assessed, which was to be "binding and conclusive to all intents and purposes:"—*Held*, that the verdict and judgment were conclusive as to the amount, but not as to the claimant's right to compensation. *Barber v. Nottingham Canal Company*, 15 C. B. N. S. 726. To a declaration in an action for a collision at sea, the defendant pleaded that a judgment *in rem* had been recovered in the Admiralty Court, and that execution had been levied by the sale of the defendant's vessel; the damage done exceeded the amount realised by the sale:—*Held*, that the plea was no answer. *Nelson v. Couch*, 8 L. T. N. S. 577, C. P.; 33 L. J. C. P. 46; 15 C. B. N. S. 99; 10 Jur. 366. A county-court order for delivery of premises does not work an estoppel. *Campbell v. Loader*, 3 H. & C. 553; 11 Jur. N. S. 286; 34 L. J. Ex. 89. *See Routledge v. Hislop*, 2 E. & E. 540. It is competent for the Court of Chancery, notwithstanding the Acts of 1858 and 1862, to reserve to the plaintiff the right of proceeding at law. *Longmead v. Maple*, 18 C. B. 255. Declaration for injury to a wall. Plea, that the plaintiff commenced proceedings in Chancery against the defendant for the very same rights and claims for which the action was brought, and that proceedings were had, and the Court of Chancery determined the same, and decreed in favour of the defendant, which decree is in force. Replication, that the Court of Chancery dismissed the bill of the plaintiff in the plea mentioned, reserving to the plaintiff the right of proceeding at law:—*Held*, that the plea and the replication were both good. *Longmead v. Maple*, 18 C. B. N. S. 265; 11 Jur. N. S. 177; 12 L. T. N. S. 143. *See Whittaker v. Jackson*, 2 H. & C. 926; 33 L. J. Ex. 181; 11 L. T. N. S. 155. The sentence of a prize court condemning a vessel is not conclusive as to any matter of fact which was the ground of condemnation, unless that matter of fact is clearly and certainly stated in the judgment as a ground of condemnation. *Hobbs v. Henning*, 18 C. B. N. S. 791; 11 Jur. N. S. 223; 34 L. J. C. P. 117; 12 L. T. N. S. 205.

[3] The estoppel against a bailee from disputing the title of his bailor, and setting up a *jus tertii*, ceases when the bailment on which the estoppel is founded is determined by what is equivalent to an eviction by title paramount; it is not enough that the bailee has become aware of the title of a third person, or that an adverse claim is made upon him, so that he may be entitled to an interpleader. *Biddle v. Bond*, 6 B. & S. 225. A. was induced by his broker to send him blank forms of transfer, which the broker filled up with numbers and description of

III. By Recitals.[1]

EVIDENCE. 4 Ab. 289. Perpetuation of 5 & 6 Vic. c. 69; Documents in 8 & 9 *id.* c. 113; 31 & 32 *id.* c. 371; of Parties, 14 & 15 *id.* c. 99; 16 & 17 *id.* c. 83. In suits for Adultery and Breach of Promise to Marry, 32 & 33 Vic. c. 68.

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I. Of the Facts which ought or need not be Proved [2]

shares different from those of the company intended by A., being shares in another company, and, by means of a duplicate key, which he had procured to be made without the knowledge of A., obtained certificates from a box of A.'s necessary to perfect the transfer; and he also forged the names of the attesting witnesses:—*Held*, that the acts of A. were not such as estopped him from showing that the deed of transfer was a forgery. *Swan v. North British Australasian Company*, 2 H. & C. 175; 10 Jur. N. S. 102; 32 L. J. Ex. 273, Ex. Ch. Negligence, to operate as an estoppel, must be the proximate cause of the loss. *Id.* It seems that the doctrine of estoppel by executing instruments in blank is confined to negotiable instruments, and does not apply to deeds. *Id. See Eyre v. Laidlaw*, 15 Ir. Com. R. 1.

Where a widow takes under a devise *durante viduitate*, with remainder to another in fee, and marries, her husband, who enters after the marriage into possession of the same land and continues to occupy it with her, is estopped from denying the title of the devisor to the land. *Asher v. Whitelock*, 11 Jur. N. S. 925; 35 L. J. Q. B. 17; 14 W. R. 26; 13 L. T. N. S. 254. P. having died, possessed of goods on which A. had a claim, B. was allowed by A. to take possession of the goods on giving an acceptance for the value; and, by an arrangement between them, a bill was drawn and endorsed to A. by procuration in the name of the deceased, and accepted by B., A. having brought an action on the bill:—*Held*, that B. was precluded from setting up as a defence that the indorsement was not P.'s. *Ashpitel v. Bryan*, 9 Jur. N. S. 791; 32 L. J. Q. B. 91; 7 L. T. N. S. 706; 5 B. & S. 723. *Trickett v. Tomlinson*, 13 C. B. N. S. 663; 7 L. T. N. S. 678. A lessee cannot dispute his landlord's title, except by showing that such title has terminated since the commencement of the tenancy, and a sub-lessee is equally estopped. *London and North Western Railway Company v. West*, 1 L. R. 2 C. P. 553; 36 L. J. 245. The entry of forged transfer of shares on register of shareholders, the company by delivering certificates is estopped from disputing the titles of *bonâ fide* holders. *In re Bahia and San Francisco R. Co.* 37 L. J. Q. B. 176. A mistake in a recital of an item in an executor's account, in a deed of arrangement and release, not allowed to act as an estoppel against the executor. *Brookes v. Haymes*, 1 L. R. 6 Eq. 25. In an action by an indorsee against an acceptor *supra protest*, for the honour of the drawer, he cannot plead that the name of the payee was fictitous, and that he was ignorant of the fact when he accepted the bill. *Phillips v. Im Thurm*, 18 C. B. N. S. 694; 11 Jur. N. S. 489. The register, flag, and pass of a ship carry with them a presumption that they are true and correct, and the owner is estopped from averring against them. *The Laura*, 12 L. T. N. S. 685, P. C. When a vendor has recognised the right of his vendee to dispose of goods remaining in the actual possession of the vendor, he cannot defeat the right of a person claiming under the vendee, on the ground that no property passed to the latter by reason of the want of a specific appropriation of the goods. *Woodley v. Coventry*, 32 L. J. Ex. 185; 2 H. & N. 164. A company who has entered a forged transfer of shares in the register is estopped by delivery of certificates from erasing the names of the parties. *In re Bahia and San Francisco Rail. Co.* 37 L. J. Q. B. 176.

[1] A., mortgagor, and B., mortgagee, before the 22 & 23 Vic. c. 35, jointly demised to C., with a proviso that either might re-enter if C. assigned without the consent of the mortgagor. Various assignments took place with A.'s consent. Before the expiration of the term, A. and the last assignee jointly conveyed to D., by a lease, reciting the former one, and containing a condition that A. should re-enter if the premises were assigned without the mortgagor's consent:—*Held*, that the second lease did not create an estoppel on D. to prevent him showing that A. was not the reversioner; and therefore A. could not enforce the condition. *Saunders v. Merewether*, 11 Jur. N. S. 665, Ex. *Scholefield v. Lockwood*, 9 Jur. N. S. 738; 11 W. R. 555; 8 L. T. N. S. 409, R.

[2] Judicial notice may be taken of the

II. Of Secondary Evidence and Proceedings to authorised Admissions.[1]

III. Admissions.[2]

IV. Presumptive Evidence when Admissible, and its Effect.[3]

V. Hearsay Evidence when Admissible, and its Effect.[4]

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persons who filled great offices of state sixty years ago. *Whaley v Carlisle*, 17 Ir. C. Law Rep. 792. So of the signature of a person certified by the Secretary for India, as a person authorised to administer oaths. 16 W. R. 71.

[1] Where a document is filed in a foreign court, it should be proved that an unsuccessful application for it has been made to the person who has the legal custody of the document, viz., to the court. Application to an inferior officer, though he may have the actual custody of it, is insufficient. *Crispin v. Doglioni*, 32 L. J. Prob. 109; *Quilter v. Jorss*, 14 C. B. N. S. 747; 3 F. & F. 644. To admit secondary evidence of a deed of apprenticeship, proof should be given that a search has been made for the original among the papers both of the master and the apprentice. *Reg. v. Hinckley, Leicester*, 9 Jur. N. S. 1054; 32 L. J. M. C. 158; 8 L. T. N. S. 270. Unless from lapse of time the presumption would be, that, as the apprentice was alone interested in the preservation of the deed, the instrument, if not found with him, was lost. *Id.* When an agreement requiring a stamp is lost, and was without a stamp when last seen, it will be taken that it never was stamped, and secondary evidence of it cannot be received. *Arbon v. Fussell*, 9 Jur. N. S. 753, Ex. A notice to produce "all letters" is not sufficient to enable secondary evidence to be given of any particular letter which is not produced. *Gardner v. Wright*, 15 L. T. N. S. 325, B.

[2] In an action against a railway company for not conveying cattle to market within a reasonable time, a county-court judge allowed evidence to be given of a conversation which took place, a week after the alleged cause of action arose, between the plaintiff and a night-inspector at one of the company's stations, whose duty it was to forward the cattle, in which the latter, in answer to a question as to why he did not send the cattle on, stated that "he had forgotten them:"—*Held*, that such evidence was improperly admitted, it not being within the scope of the man's authority to make admissions as to bygone transactions. *Great Western Railway Company*, App., *Willis*, Resp., 18 C. B. N. S. 748; 34 L. J. C. P. 195.

[3] There is no presumption of fact to be made against a party who enforces the rule against the disclosure, by his solicitor, of knowledge professionally acquired. *Wentworth v. Lloyd*, 10 H. L. Cas. 589; 33 L. J. C. 688; 10 L. T. N. S. 767. In questions as to due execution of a document, the presumption *omnia rite esse acta* applies with more or less force according to the circumstances of each case. *Vinnicombe v. Butler*, 34 L. J. Prob. 18. And where in support of a plea of coverture, the defendant stated that she was married at a Roman Catholic chapel by a priest, and according to Roman Catholic rites; that she had since lived with her husband; that he was then in Australia, but that she had heard from him within a few months. No evidence was given of the chapel being registered, or that the registrar was present, as required by 6 & 7 Will. 4, c. 85:—*Held*, that the evidence was sufficient, as the law would presume that the provisions of the act had been complied with. *Sichel v. Lambert*, 15 C. B. N. S. 781; 10 Jur. N. S. 617; 33 L. J. C. P. 137. A former verdict, and judgment founded thereon, established the fact of a tenancy from year to year having subsisted, the legal presumption of its continuance is not rebutted by evidence of a forcible possession having been subsequently taken by the landlord. *M'Mahon v. Ellis*, 14 Ir. Com. Law Rep. 499, C. P. Where the right to property depends on the fact, whether A. or B. survived the other, and A. is proved affirmatively to have been alive at a later date than B., but B. has not been heard of for more than seven years (B. was an infant in arms), A.'s representatives will be entitled, in the absence of evidence to prove that B. survived A. *In re Green's Settlement*, 1 L. R. Eq. 288. The entry of a resolution in the minute book of a corporation, accepting a proposal for a lease of part of the corporate property, was partially erased:—*Held*, in the absence of evidence to the contrary, that the erasure must be presumed to have been made before the book was signed by the chairman of the meeting at which the resolution was passed. *Steevens's Hospital v. Dyas*, 15 Ir. Chanc. Rep. 405, R.

[4] Evidence of reputation is inadmissible to prove a person's age. *Colclough v. Smith*, 10 L. T. N. S. 918, Ir. R. And the written statements by a sick person to a medical man of the symptoms of his malady are not admissible, although the medical man has given advice upon the faith of such statements. *Witt v. Witt and Klindworth*, 3 S. & T. 143; 32 L. J. Mat. Cas. 179; 11 W. R. 154; 8 L. T. N. S. 175. A local agent, whose duty it was to advise his principals of all his transactions on their account, wrote them a letter, in which were these words: "I inclose draft of B., which he sent to-day with three huge cases to the office. I inclose his invoices for your perusal. He leaves shipment of his goods to your judgment. He will renew. . . . I consider him a perfectly safe man, should there be any reclamation:"—*Held*, that this letter could not be used by the principals after the agent's death, to prove the nature of the

VI. Admission of Documents, Costs of Proof.[1]

VII. Documentary Evidence, Public and Private.[2]

VIII. Withdrawing Evidence.[3]

EXCAVATIONS.[4]

EXCEPTIONS. *See* Bill of.

EXCHEQUER Bill. *See* 29 Vic. c. 24, Consolidating Actions relating to.

EXCISE. 4 Abr. 344. *See* 29 & 30 Vic. c. 64, to Amend Laws relating to Inland Revenue.

EXECUTION.[5] 4 Abr. 344. *See* also Lien Lacius.

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transaction to which it referred, as it was neither a record of the transaction, which it was the specific duty of this agent to make, nor an entry against his interest. *Smith v. Blakey*, 36 L. J. Q. B. 156.

[1] The plaintiff, after notice, refused to admit a document purporting to be a receipt for cash and for a promissory note. The jury found that the receipt was valid as to the cash, but not as to the promissory note. A certificate that the refusal to admit was reasonable, having been granted by the judge on an *ex parte* application of the plaintiff four months afterwards, and after the taxation of costs by the master, the court refused to set it aside. *Day v. Vinson*, 33 L. J. Exch. 171; 9 L. T. N. S. 723.

[2] Entries of pedigrees in a family Bible, which is produced from the proper custody, are admissible as evidence, without proof of handwriting or authorship. *Hubbard v. Lees*, 1 L. R. Exch. 255; 35 L. J. Exch. 169; 14 L. T. N. S. 442. The Court of Admiralty, regarding lighthouse journals as official books kept under competent authority, will admit their contents in evidence upon their mere production. *The Maria das Dorias*, 32 L. J. Adm. 163; 11 W. R. 500; 7 L. T. N. S. 838. Under s. 295 of 17 & 18 Vic. c. 104, a notice published in the Gazette, purporting to be given by the Lords Commissioners of the Admiralty, but signed only "by command of their lordships, W. G. R." was, by production of the Gazette, proved to be duly made by the Admiralty." *The Olivia*, 1 Lushington, 497. Cases and opinions stated and taken after a dispute has arisen touching the same subject-matter, but in reference to another litigation, are privileged from production. Letters written by one defendant to a co-defendant in reference to the dispute, and directed to be sent to the joint solicitor of the defendants, are also privileged. *Jenkyns v. Bushby*, 1 L. R. 2 Eq. 547. Production of Law List, in which plaintiff's name does not appear, is sufficient evidence that he is not an attorney even in criminal prosecutions. *Reg. v. Wenham*, 10 Cox, C. C. 222. As to admission of maps and parol evidence to explain, *see Lyle v. Richards*, 1 L. R. W. L. 222; 35 L. J. Q. B. 214. A parliamentary survey made during the Commonwealth is evidence of reputation, whether made under competent authority or not. *Freeman v. Reed*, 4 B. & S. 174; 32 L. J. M. C. 226. A judgment in a superior court cannot be proved by a judgment paper from the office of the master, but only by an examined or office copy of the record. *Jeffs v. Day*, 12 L. T. N. S. 852. Letters written by third persons in the due course of business are admissible to prove facts relating to that business which the writers might have proved if summoned as witnesses. *Fennerstein, In re*, 14 W. R. 890, Supreme Court, U. S. Where a letter is proposed to be put in evidence, and the other side agrees to it, but it never in fact is handed to or read by the officer of the court, counsel cannot, in his address to the jury, refer to or read extracts from such letter. *Allone v. Delmanny*, 15 L. T. N. S. 217.

[3] Indictment for assault with intent. The prosecutrix, who was deaf and dumb, was examined on the *voir dire* as to competency, and sworn; but it soon appeared that she did not understand the questions. The judge then withdrew her evidence, and admitted other evidence of the offence, confining the attention of the jury to this latter evidence. Conviction affirmed. *Reg. v. Whitehead*, 1 L. R. C. C. R. 33; 35 L. J. M. C. 186. But the C. B. thought the jury ought to have been told, "If from what has passed during the imperfect examination of the prosecutrix you can derive any light, you may do so." 35 L. J. 189.

[4] Excavating near boundary not actionable, unless appreciable damage sustained. *Smith v. Thackerah*, 35 L. J. C. P. 276.

[5] Speedy execution, when opposed, will not be ordered, except on an affidavit alleging that the debt is in danger. *Brewerton v. Parker*, 17 L. T. N. S. 325. The court will not set aside an execution as issued against good faith, unless the terms of the arrangement have been strictly fulfilled by the defendant. *Parry v. Great Ship Company*, 4 B. & S. 556. Where execution has been levied prematurely, and the defendant applies to a judge at chambers to set aside the *fi. fa.* &c. with costs, the judge, in making such order, has a discretion to impose the

EXECUTORS and ADMINISTRATORS. 4 Abr. 344.

I. Appointment of Executors and Administrators. *See* Administration; Probate.

II. Of Probate of the Will. *See post*, Probate.

III. Rights and Duties of Executors and Administrators, p. 193.

IV. Liabilities of Executors and Administrators, p. 194.

V. Of Devastavit by an Executor, *id.*

VI. Of an Executor de son Tort, *id.*

VII. Of an Executor de bonis non, p. 194.

VIII. Proceedings in Suits by and against Executors and Administrators, p. 396.

III. Rights and Duties of Executors and Administrators.[1]

terms of bringing no action; and the court refused to review such discretion. *Bartlett v. Stinton*, C. P. L. R. 1 C. P. 483; 35 L. J. 238. Where a deed is executed by the assignor of goods for the benefit of creditors, but not by the trustee, who is ignorant of the deed in the appointment; the knowledge of the assignor is the knowledge of the trustee, within the 19 & 20 Vic. c. 97, s. 1. *Hobson v. Thelluson*, 36 L. J. Q. B. 302; 2 L. R. Q. B. 642. By 19 & 20 Vic. c. 108, s. 30, where an action of contract is brought in one of the superior courts to recover a sum not exceeding 20*l.*, and the defendant suffers judgment by default, the plaintiff shall recover no costs unless a court or judge shall otherwise order:—*Held*, that this section does not deprive a plaintiff of the costs of a writ of execution. *Armitage v. Jessop*, 2 L. R. C. P. 12; 12 Jur. N. S. 963; 15 W. R. 130; 15 L. T. N. S. 214. F. issued a *fi. fa.* against the defendant, and lodged it with the sheriff on the 3d August. The warrant to seize under the writ was delivered to a bailiff, but no seizure was proved. On the 6th August the defendant assigned his interest in a term of years to W. and Co., who had notice of the writ. On the 12th August the sheriff sold the term to the plaintiff, and executed a deed of assignment on the 4th September:—*Held*, that the plaintiff was not entitled to recover in ejectment. *O'Brien v. Murray*, 17 Ir. Com. Law Rep. 46, Q. B. The privilege of exemption from the execution of legal process, which is said to attach to a royal residence, is based solely on the principle that the personal comfort and convenience of the sovereign should not be interfered with; and, though actual personal residence is not necessary to confer it, the privilege does not extend to the precincts of the palace of Hampton Court, which has not been occupied as a royal residence since the reign of King George II., and which the sovereign shows no intention of residing in again. *Attorney-General v. Dakin*, 37 Law J. Rep. (Exch. Ch.), Exch. 150.

[1] Administrators ought not to refuse to carry out a contract entered into by the intestate, because the effect of the breach of contract would be to increase the personal estate. *Cooper v. Jarman*, 12 Jur. N. S. 956; 15 W. R. 142. The difficulty of collecting arrears of rent does not excuse executors for not collecting them, without some evidence that in fact they could not have been recovered. *Alexander, in re*, 13 Ir. C. R. 137. But executors were allowed to retain for a limited period shares of a banking company, as great benefit to the testator's estate might be derived if retained until a certain date. *Hirst, In re*, 11 L. T. N. S. 533. A testator gave his executors full power to sell his ships by public or private sale, to sell under mortgage by private valuation to any party holding shares with him in therein, if they should be desirous of purchasing the same:—*Held*, that this was a discretionary power, and conferred no benefit on the part-owners. *Brown v. Gellatly*, 31 Beav. 243. *See Selby v. Bowie*, 9 Jur. N. S. 425, L. J. The 29th section of Lord St. Leonards' Act (22 and 23 Vic. c. 35) gives to executors who avail themselves of its provisions in the distribution of the assets of their testator, the same protection from liability to future claims against those assets as they would have had under a decree of the Court for the administration thereof. *Clegg v. Rowland*, 37 L. J. C. 137. A judgment not registered in the lifetime of the debtor, though registered after his death, is not entitled to priority over simple contract debts in the administration of the assets. *Kemp v. Waddingham*, 1 L. R. Q. B. 355; 35 L. J. 114. The 23 & 24 Vic. c. 38, s. 3, only applies to judgments recovered against a testator or an intestate in his lifetime, and not to

IV. Liabilities of Executors and Administrators.[1]

V. Of Devastavit by an Executor.[2]

VI. Of an Executor de son Tort.[3]

judgments recovered after his death against his representative. *Jennings v. Rigby*, 9 Jur. N. S. 1144; 9 L. T. N. S. 308. An executor, being surety for his testator, paid the debt after the testator's death:—*Held*, that he had a right to retain his debt in preference to the other creditors of equal degree. *Boyd v. Brooks*, 34 Beav. 7. Affirmed on appeal, 34 L. J. Chanc. 605; 12 L. T. N. S. 38, C. But he ought not to retain as against a receiver appointed by the court. *Davenport v. Moss*, 14 L. T. N. S. 133. An executor who proves under the bankruptcy of a residuary legatee in remainder of his testator, for a debt due to his testator, is not thereby debarred his right of retainer out of the residuary estate. *Stammers v. Elliott*, 4 L. R. Eq. 675; 16 L. T. 600. Although a debt due to a testator's estate is barred by the Statute of Limitations, his executors may set off a legacy bequeathed by him to the debtor against the debt, and retain the same accordingly. *Coates v. Coates*, 10 Jur. N. S. 532; 33 L. J. Chanc. 448; 9 L. T. N. S. 795, R. An executor, who is also mortgagee of real estate (not devised), is not bound to retain personal estate coming to his hands, in the first instance, in discharge of his mortgage debt, and the personal estate still remains liable. *Binns v. Nichols*, 1 L. R. 2 Eq. 258; 35 L. J. 635, C. A testator bequeathed his residuary personal estate to his daughter. The daughter survived him several years, and bequeathed her residuary estate to her six children. One of her sons, who owed the testator 1400*l.*, became bankrupt some time after her death. It had been ascertained before the bankruptcy that the testator's estate yielded a clear residue exclusive of the 1400*l.*:—*Held*, that the executors of the daughter were entitled to retain the 1400*l.* out of the son's share in his mother's estate. *Bousfield v. Lawford*, 1 De G. J. & Sm. 459. Where an executor was surety for the testator in respect of certain promissory notes:—*Held*, that, as against other simple contract creditors, he had a right to retain out of the assets the amount paid by him. *Bathurst v. De La Zouch*, 2 Dick, 460, is mis-reported. *Boyd v. Brooks*, L. C. 13 W. R. 419, B. If it becomes necessary in the course of an administration suit to take proceedings to set aside dealings with the testator, the executor, and not a beneficiary, is the proper person to take the necessary proceedings, unless he has been guilty of misconduct, or refuses to conduct them. *Harrison v. Richards*, 1 L. R. Ch. Ap. 473; 12 Jur. N. S. 871; 15 L. T. N. S. 137, L. J.

[1] Mere delay in taking accounts is not sufficient to charge an executor with interest on the balance retained in his hands. *Blogg v. Johnson*, 36 L. J. Chanc. 859; 2 L. R. Ch. 225; 16 L. T. N. S. 306. Under a local act, commissioners were empowered, when a vessel has been sunk or stranded, if the owner should neglect or refuse, within a certain time, to raise it, to cause it to be raised, or if that could not be effected to blow it up, and to recover the expense in a summary manner from the owner. A vessel having sunk, her two partners did not raise her, so, by order of the commissioners, endeavours were made to raise her, and these proving ineffectual, she was blown up. After the attempts to raise, but before the blowing-up, one of the owners died, and proceedings were taken against the survivor and the co-executor to enforce payment of the expenses, both of the attempts to raise the ship and to blow it up:—*Held*, that the order for payment of the expenses could not be made against the executor, but that it might be made against the co-owner. *Wilson v. Cator*, 11 W. R. 337

[2] The estate of an executrix *feme covert* is liable for a *devastavit* committed by her husband, she having survived him. *Soady v. Turnbull*, 1 L. R. 1 Ch. Ap. 494; 35 L. J. 784; C. 12, Jur. 612. Count, in an action against the executor of J. H. stated the recovery by plaintiff of a judgment against J. H. as executor of R. H., *de bonis testatoris*, for a breach of covenant by R. H., which judgment was still unsatisfied; and it alleged that J. H. had wasted the assets of R. H. to the extent of the judgment. The plea thereto, admitting the *devastavit*, stated that R. was a co-executor with J. H. of R. H.; that R. was still living; that at the death of J. H. he had in his hands, and after his death R. had in his hands, sufficient assets of R. H. to satisfy the judgment; that defendant never had assets of R. H.; but it did not state that defendant had not assets of J. H.:—*Held*, the plea was no defence to the action. *Coward v. Gregory*, 2 L. R., 2 C. P. 153; 36 L. J. 1.

[3] *Plene administravit* by an executor *de son tort* is no defence, either legal or equitable, in bar of an action of trover, trespass, or for money received, at the suit of the personal representatives of the deceased. *Elworthy v. Sanford*, 3 H. & C. 34; 34 L. J. Ex. 42; 10 L. T. N. S. 654, Ex. But in trover by an administratrix against A., who had made himself executor *de son tort*, evidence was received, in mitigation of the damages against A., of payments made by him, which would have been allowed in a due course of administration by a rightful executor:—*Held*, that such evidence was properly received. *M'Carthy v. Donovan*, 13 Ir. Com. Law Rep. 195 C. P. *See Leigh v. Birch*, 9 Jur. N. S. 1265; 8 L. T. N.S. 230, R. At law an

VII. Of an Executor de bonis non.[1]

VIII. Proceedings in Suits by and against Executors and Administrators.[2]

executor *de son tort*, cannot discharge himself, unless he hands over the property to the rightful representative before action brought. *Hill v. Curtis*, 1 L. R. Eq. 90; 12 Jur. N. S. 4; 35 L. J. Chanc. 133; 13 L. T. N. S. 584.

[1] B., sole executrix of, and universal legatee named in a will of A., died intestate, and her three children took out a joint administration to her estate. One of the children subsequently died, and a second took up her residence in Australia. A representative being required to the estate of A., to transfer trust property the court granted administration, with the will annexed, of the estate of A., left unadministered by B., to one of the administrators of the effects of B., the other surviving administrator having been cited, and not appearing. *Hancock, In Goods of*, 10 Jur. N. S. 758; 33 L. J. Prob. 174.

[2] The rule that, in order to entitle a party to sue in any court of this country, whether of law or of equity, in respect of the personal rights of a testator or of an intestate, he must appear to have obtained probate or letters of administration from the proper court in this country, is subject to this qualification, that he is suing in right of the deceased. *Vanquelin v. Bouard*, 15 C. B. N. S. 341. Where an action is commenced in the name of a dead man, his representatives cannot be substituted as plaintiffs. *Clay v. Oxford*, 2 L. R. Exch. 54; 12 Jur. N. S. 944; 36 L. J. Exch. 15; 15 W. R. 109; 15 L. T. N. S. 286. After counts by a plaintiff as executor, for an excessive distress and for distraining for more rent than was due, the declaration proceeded thus:—"And the plaintiff as such executor as aforesaid, also sues the defendant for money paid by him as such executor as aforesaid, for the defendant at his request, and for money received by the defendant for the use of the plaintiff, and for money found to be due from the defendant to the plaintiff on an account stated between them. And the plaintiff, as such executor as aforesaid, claims 50*l.*":—*Held*, that the declaration was bad for misjoinder. *Davies v. Davies*, 1 H. & C. 451. An administrator cannot sue in his representative character upon contracts made after the death of the intestate, in the course of carrying on the intestate's business. *Bolingbroke v. Kerr*, 1 L. R. Exch. 222; 35 L. J. Exch. 137; 14 L. T. N. S. 365. A. obtained from the Heralds' College a grant of arms to be borne by him and the descendants of his brother. His brother had two sons, the elder of whom was heir-at-law of A., and the younger his executor with another person. A. bequeathed all his household goods and effects to his wife, and she took possession of the grant of arms:—*Held*, that the two nephews of A. had not such an exclusive interest in the grant of arms as to enable them to maintain detinue for it against the wife of A. *Stubs v. Stubs*, 1 H. & C. 257; 31 L. J. Exch. 510. Husband and wife, the latter being administratrix of her father, carried on the deceased's business (that of a saddler) with money of the deceased's, all the materials of the deceased having been worked up:—*Held*, in an action by husband and wife, as administratrix, for goods sold, and work done, by the plaintiff since the death of the deceased, that the action should have been by the husband in his personal capacity. *Bolingbroke v. Kerr*, 1 L. R. Ex. 222; 35 L. J. 137. An administrator of a chattel interest in land is not estopped from bringing ejectment by having made in his own right a conveyance to the occupier, although he is himself to take a beneficial interest under the administration. *Metters v. Brown*, 1 H. & C. 686; 9 Jur. N. S. 416; 32 L. J. Exch. 138; 11 W. R. 429; 7 L. T. N. S. 795. Where in an administration suit by beneficiaries against the executor, it became necessary to institute proceedings to get in the assets of the deceased, the conduct of such proceedings was given by the V. C. to the plaintiff, the executor to be indemnified out of the estate against costs. On appeal the Lords Justices discharged that order, the executor not having misconducted himself. *Harrison v. Richards*, 35 L. J. 677, C. To a declaration against the defendant, as assignee of a lease, alleging the nonpayment of rent, he pleaded: first, that administration *de bonis non* of the lessee of the premises was granted to A. whom he afterwards married, and that neither he nor his wife ever entered into or took possession of the premises, nor did they vest in the defendant otherwise than as in, and by the plea appears. Secondly, that the plaintiff sued the defendant and his wife as administratrix for the recovery of the same rent, and they pleaded *plene administravit præter*; that the plaintiff recovered judgment against them for the amount claimed, part of be levied *de bonis testatoris*, and the residue to be levied of assets *quando acciderint*:—*Held*, that the plea afforded a good answer as an argumentative traverse that the defendant was assignee. *Kearsley v. Oxley*, 2 H. & C. 896. And also good as showing that the defendant, if liable at all, was only liable in a representative character, and that he never entered or took possession of the premises; and the second was good as a plea in the nature of a judgment recovered. *Id.* The widow of a French subject became donee of the universality of the real and personal estates of the succession of her late husband, and as such, all his rights, by the law of France, vested in her, and she was entitled to enforce the same in her own name, and she became liable also to her late husband's liabilities. She was compelled to pay the

EXPLOSIVE Substances, Injuries by. 24 & 25 Vic. c. 100.
EXPENSES of Prosecution.[1]
EXTORTION.[2]
EXTRADITION.[3]

F.

FACTORIES. 4 Abr. 427.

I. Extension of Factory Acts, and what Factories within.[4]

amount of certain bills of exchange, of which her husband was drawer and the defendant acceptor, and recovered judgment against the defendant in France. In an action on this judgment,—*Held*, that the plaintiff was not bound to take out letters of administration in this country previously to bringing her action. *Vanquelin v. Bouard*, 15 C. B. N. S. 341; 10 Jur. N. S. 566; 33 L. J. C. P. 78. An executor cannot bring an action after the time limited by the Statute of Limitations has expired, even though he brings it within a reasonable time, unless his testator has commenced an action before the time expired, and the action has abated by the act of God. *Penny v. Brice*, 13 W. R. 342; 11 L. T. N. S. 632, C. P.

[1] The provisions in 7 Geo. 4, c. 64, s. 23, 14 & 15 Vic. c. 55, s. 2, for the allowance of costs, expenses, and compensation to prosecutors and witnesses, extended to expenses incurred in attending before an examining magistrate or magistrates, although the parties may not be bound over to prosecute or give evidence, and though no committal for trial may take place. 29 & 30 Vic. c. 52.

[2] A threat to a father to accuse his son of an abominable offence unless he would buy a mare from him at a stated price:—*Held*, this was an offence within 24 & 25 Vic. c. 94, s. 47. *Reg. v. Henry Redman*, 1 L. R. C. C. 12.

[3] By 29 & 30 Vic. c. 121, s. 1, continued by 30 & 31 id. 143, warrants of arrest and copies of depositions are to be read in evidence if authenticated as directed by the act; act to be construed with 8 & 9 Vic. c. 113, and 14 & 15 Vic. c. 99. Authentication of depositions under an extradition treaty suffices if in the manner required by law at the time of their production. *Ex parte Dubois*, 96 L. J. M. C. 10; *see* 6 & 7 Vic. c. 75; 29 & 30 *id.* c. 121. *See Re Coppers*, 2 L. R. Ch. 47. Under 6 & 7 Vic. c. 76, s. 1, piracy means such an offence as by the municipal laws of the United States is constituted piracy, and is within the exclusive jurisdiction of the United States. *Ternan, In re*, 5 B. & S. 645; 9 Cox, C. C. 522; 33 L. J. M. C. 201; 10 L. T. N. S. 499. Where a requisition had been made by the authority of the United States for the extradition of certain persons in England, who were charged with the crime of piracy on the high seas, and it appeared that such persons had, supposing they had committed the crime of piracy at all, committed such a crime as would amount to piracy by the law of nations:—*Held*, that this country ought not to give them up. *Id.* A warrant is sufficient, if made in the form given by the 8 & 9 Vic. c. 120. *Id.* A party guilty of an act not a forgery by the law of England or the general law of the United States, cannot be surrendered, 6 & 7 Vic. c. 76. *Re Windsor*, 6 B. & S. 522.

[4] By 26 & 27 Vic. c. 38, the words bleaching works and dyeing works, in 23 & 24 Vic. c. 78, shall be further understood to mean any building, buildings, or premises in which females, young persons, and children are employed, and in any part of which buildings or premises any process previous to packing is carried on in the occupation of calendering or finishing of any yarn or cloth of cotton, wool, silk, or flax, or any of them, or any mixture of them, or any yarn or cloth of any other material or materials, or in any process incident to such calendering or finishing, and in one or more of which processes steam, water, or other mechanical power, is used or employed; provided always, that nothing in the act contained shall extend to any building, buildings, or premises, defined to be a factory by the 7 & 8 Vic. c. 15. The 27 & 28 Vic. c. 48, extends the Factory Acts 4 & 5 Wm. 4, c. 103, 7 & 8 Vic. c. 15, 14 & 15 Vic. c. 54, 17 & 18 Vic. c. 104, and 20 & 21 Vic. c. 38, as to cleansing and ventilation, and the regulation of the labour of the children, young persons, and women employed therein. The 27 & 28 Vic. c. 98, extends the provisions of the 23 & 24 Vic. c. 78, as to bleaching and

II. Hours of Labour of Women and Young Children employed in.[1]

III. Duty of Millowner to Fence Machinery.[2]

FALSE IMPRISONMENT.[3] 4 Ab. 428.

dyeing works. A factory used for the manufacture of waste cotton into half-stuff, which is afterwards conveyed to another factory to be converted into paper, is a factory used solely for the manufacture of paper, within section 73 of the 7 & 8 Vic. c. 15, and the distance between the two factories is immaterial. *Coles v. Dickinson*, 16 C. B., N. S. 604; 32 L. J. M. C. 235; 10 L. T., N. S. 616. Any accident occurring in a factory, whether caused by the machinery or not, must be reported to the certifying surgeon of the district, if the person to whom it occurred is thereby prevented from returning to work before nine o'clock the following morning, and a returning to work, where there is inability to continue it, does not exempt the occupier of the factory from reporting the case. *Fakeman v. Stephenson*, 3 L. R. 3 Q. B. 192; 37 L. J. M. C. 57; 18 L. T. 539. A manufactory whereby crinoline steel is covered by a plait of cotton threads woven round the steel by machinery, is a manufactory within the words of this act. *Whimper v. Harney*, 13 W. R. 440. Under the 23 & 24 Vic. c. 78, the process of "finishing" is not included, unless carried on as incidental to the processes of bleaching or dyeing. *Howarth v. Coles*, 12 C. B. N. S. 139; 9 Jur. N. S. 251, C. P.

[1] A child under thirteen was employed in a room in a building, within the precincts of which there was a quantity of machinery moved by steam, and devoted to the manufacture of an article composed of wool and cotton mixed, but the child was not employed in any respect upon, or in attendance to, the machinery, nor was there any machinery in the room in which he was employed in pricking pieces of leather with an awl, to fit them for adaptation to form parts of the thing manufactured in the building;—*Held*, not to be a case within the exception in the 3 & 4 Wm. 4, c. 103, and 7 & 8 Vic. c. 15. *Taylor v. Hickes*, 12 C. B. N. S. 152; 9 Jur. N. S. 21. T. was owner of premises in M., in which he carried on the manufacture of cotton sewing thread. He also had premises in L., to which he was in the habit of sending the thread in hanks, and where it was wound by machinery, moved by steam-power, firstly, on to cops, and, secondly, on to spools. No other process except this particular winding was carried on at L.:—*Held*, that these latter premises were a mill or factory within 3 & 4 Wm. 4, c. 103, s. 1, which prohibits the employment of young persons in the night, and also within 7 & 8 Vic. c. 15, sects. 27, 73, by which the occupiers of factories are ordered to keep registries of all young persons employed by them in their factories, and and that T. was liable to the penalty imposed by the latter act for the offence of not keeping such a register. *Haydon v. Taylor*, 33 L. J., M. C. 30; 9 L. T., N. S. 382; 4 B. & S. 519.

[2] Any accident occurring in a factory, whether caused by the machinery or not, must be reported to the certifying surgeon of the district, if the person to whom it occurred is thereby prevented from returning to work before nine o'clock the following morning, and a returning to work, where there is inability to continue it, does not exempt the occupier of the factory from reporting the case. *Fakeman v. Stevenson*, 3 L. R. Q. B. 192; 37 L. J., M. C. 57; 18 L. T. 539. A child employed in finishing goods in a shed, in which finishing alone is carried on, but which communicates internally with other buildings in which printing is carried on, is employed in a print work within the meaning of 8 & 9 Vic. c. 29, s. 2, whether the particular finishing be incidental to the process of printing or not; and a surgeon's certificate of its health is therefore necessary under section 20. *Hardcastle v. Jones*, 3 B. & S. 153; 9 Jur. N. S. 19; 32 L. J., M. C. 49; 7 L. T. N. S. 322. A servant was employed to oil mill machinery, of a nature required by 7 & 8 Vic. c. 15, and 19 & 20 Vic. c. 38, to be fenced, but the fence became broken. Upon the servant complaining of this to the defendant's manager, in the defendant's hearing, the manager promised that the fence should be presently repaired, and the servant thereupon continued in the service; but before the fence was repaired, and whilst he, in discharge of his duty, was oiling the machinery, an accident happened by which, without negligence on his part, he was injured, the master was held liable, and that, independently of any statutory obligation, there was negligence in the master in not fencing the dangerous machinery on which the servant was employed. *Homes v. Clarke*, 9 L. T. N. S. 178, Ex. Ch. The owners of dangerous machinery, who by their foreman employ a young person about it unacquainted with its nature and use, are bound to take due care that such person is duly instructed therein; and if they either neglect this, or if express directions are given by the foreman to use the machinery in a manner that must lead to danger, of which the young person is not likely to be fully aware, they are liable for any injury sustained by such person in the use of the machinery in that manner. *Grizzle v. Frost*, 3 F. & F. 622.

[3] By the Articles of War for the regulation of the troops in India, the commanding officer of the district where an offence was committed, had the power of naming the prison in which any offender sentenced to imprisonment should be imprisoned. A.

FALSE OATHS and Declarations. *See* Perjury.

FALSE PRETENCES.

I. What amounts to.[1]

was sentenced by court-martial to imprisonment, which sentence was confirmed by C. the commanding officer who ordered him to be imprisoned at Agra. Afterwards A. was by order of C. removed to Calcutta, to be sent to England, and on his arrival in England he was imprisoned in the Queen's prison by order of the Commander-in-Chief (not C.):—*Held*, that he was in wrongful custody. *Re Allen*, 3 Ell. & Ell. 388. It is no bar to an action in this country for an assault and false imprisonment committed by one Englishman upon another at Naples, that by the law of Naples no proceeding to recover damages for the trespass could be maintained by the plaintiff until after the defendant had been found guilty, and condemned by the criminal tribunal at Naples, nor is it any bar to such action that, by the law of Naples, damages in respect of it could only be recovered in one particular form of proceeding, which had been commenced and was still pending. *Scott v. Seymour* (*Lord*), 1 H. & C. 219; 32 L. J. Exch. 61; 8 L. T. N. S. 511, Ex. Ch. Where to a declaration for assault and battery, the defendant pleads *son assault demesne*, and issue is joined on such plea, the plaintiff cannot under that issue set up as an answer to the defendant's case that he (the defendant) was guilty of excess in resisting the assault. He ought, in order to avail himself of such an answer, to new assign the excess on the part of the defendant. *Rimmer v. Rimmer*, 16 L. T. N. S. 238. In an action for imprisonment on a charge of embezzlement, the charge being, "that he had embezzled various sums within the last fortnight," the defendant pleaded not guilty by 24 & 25 Vic. c. 96, s. 103, that the plaintiff had been found committing the offence:—*Held*, that the statute did not apply at all to such a case, and that the plea could not be sustained. *Field v. Musgrove*, 16 L. T. N. S. 536. So where there is no plea of justification, the defendant cannot, in mitigation of damages, give evidence of recent apparent losses of money on his part, though offered for the purpose of explaining the circumstances which induced in his mind a belief in the plaintiff's guilt. *Yardley v. Hine*, 17 L. T. N. S. 197. In justifying giving a person into custody on a charge of felony, it is sufficient to prove such facts as constitute a reasonable and probable cause for the charge, although some facts in the plea are either not proved or are disproved. *Husler v. Marks*, 30 L. J. Ex. 389; 7 H. & N. 56. The question of reasonable and probable cause in such an action is one of law, and not of fact. 7 H. & N. 56. The Exchequer Chamber has held that the neglect of an obvious and ready mode of ascertaining the truth is an element in determining whether defendant had reasonable and probable cause. *Perryman v. Lister*, 37 L. J. Ex. 166; 3 L. R. Ex. Ch. 197; 15 L. T. 374. In such an action, the question, whether a person was justified in giving another into custody upon hearsay evidence, must be decided upon the facts of the particular case. *Id.* It is a reasonable inference that a railway company, having power to apprehend travellers by their line who have not paid their fares, have on the spot officers with authority to determine whether the servants shall or shall not apprehend a person so accused. *Goff v. Northern Railway Company*, 3 Ell. & Ell. 672. A plaintiff having seen (late at night) his wife and a man go into a certain house, obtained access thereto, and, not finding the man, declared he would remain there until he saw him. The defendant, who was lodging there, being much annoyed by the plaintiff, who continued to remain outside the door of his apartments, after urging him in vain to leave, sent for a policeman to remove him, and on his declining to interfere unless he was given in charge, the defendant gave him in charge, and he was conveyed to the police-station, at which place the defendant attended, and declined to make any charge. Upon an action for an assault and false imprisonment,—*Held*, that although the plaintiff was committing a civil trespass, and so may have been removed from the house; yet, as he was not actually committing a breach of the peace, his arrest and detention were unlawful. *Jordan v. Gibbon*, 8 L. T. N. S. 391; 3 F. & F. 607, C. P.

[1] A false pretence as to an existing, essential fact will sustain an indictment for obtaining money by false pretences, although it is united with false promises which alone would not have supported the conviction. *Reg. v. Jennison*, 1 L. & C., C. C. 157. *See R. v. Suter*, 17 L. T. N. S. 177. *R. v. Hunter*, *id.* 321. But where the prosecutor lent 10*l.* to the prisoner on the false pretence that he was going to pay his rent, and if the prisoner had not told him that he was going to pay his rent the prosecutor would not have lent the money:—*Held*, that this was not a false pretence of any existing fact to warrant a conviction. *Reg. v. Lee*, 9 Cox, C. C. 304; 1 L. & C., C. C. 309; 8 L. T. N. S. 437. A false affirmation of the weight of an article sold by weight, with intent to defraud, is indictable as a false pretence. *Reg. v. Lee*, 1 L. & C., C. C. 418; 9 Cox, C. C. 460; 32 L. J., M. C. 129. *Reg. v. Ridgway*, 3 F. & F. 838. On an indictment charging the prisoner with obtaining goods by certain false pretences, the jury having found that the prisoner did obtain the goods by means of the false pretences, but that he intended to pay for them when it should be in his

II. Of the Indictment.[1]

FEES.[2]

power to do so, and a verdict of guilty having been entered, it was held the prisoner was properly convicted. *R. v. Nayor*, 1 L. R. C. C. 4. It was the duty of a servant to ascertain daily the amount of dock dues payable by his master, and, having ascertained it, to apply to his master's cashier for the amount, and then to pay it in discharge of the dues. On one occasion, by representing falsely to the cashier that the amount was larger than it really was, as he well knew, he obtained from the cashier the sum he stated it to be, and then paid the real amount due, and appropriated the difference:—*Held*, that this offence was not larceny, but obtaining money by false pretences. *Reg. v. Thompson*, 1 L. & C., C. C. 233; 9 Cox, C. C. 222; 32 L. J., M. C. 57. The obtaining money by false pretences from the wife of the prosecutor, apart from her husband, will sustain an indictment. *R. v. Moseley*, 31 L. J. M. C. 24; 1 L. & C. 92. So where a man represents himself to be unmarried, and obtains money by promising to furnish a house with it and marry the prosecutrix. *R. v. Jenkinson*, 31 L. J. M. C. 146. A conviction for obtaining a chattel by false pretences is good, although the chattel is not in existence at the time the pretence is made, provided the subsequent delivery of the chattel is directly connected with the false pretence. Whether or not there is such a direct connexion is a question for the jury. *Reg. v. Martin*, 1 L. R. C. C. R. 56; 36 L. J., M. C. 20; 10 Cox, C. C. 383; 15 L. T., N. S. 54. The prisoner entered into a partnership with the prosecutors, and it was subsequently agreed that he should travel about the country to obtain orders, and have a commission upon all orders he might receive, such commission to be paid to him as soon as he received the orders, and to be payable out of the capital funds of the partnership before dividing any profits. He falsely represented to his partners that he had obtained a certain order, and in consequence was paid his commission thereon:—*Held*, that this was a mere matter of account between the partners, and that the prisoner was, therefore, not guilty of obtaining money by false pretences. *Reg. v. Evans*, 9 Cox, C. C. 238; 1 L. & C., C. C. 252; 9 Jur. N. S. 184; 32 L. J. M. C. 38. A person who makes a false pretence of having a power to do something, whether the power be physical, moral, or supernatural, for the purpose of obtaining money or goods, is indictable for false pretences. *Reg. v. Giles*, 1 L. & C., C. C. 502; 10 Cox, C. C. 44; 11 Jur. N. S. 119; 34 L. J. M. C. 51; 11 L. T., N. S. 643. An indictment charged the prisoner with obtaining money by falsely pretending that a five-pound bank-note was of the value of 5*l*. It appeared in evidence that the note was a five-pound note of a bank which had been made bankrupt forty years before, and had not re-opened, and the prisoner knew this when he passed it. The bankruptcy proceedings were not produced, and there was no evidence as to what dividend, if any, had been paid:—*Held*, that the evidence was sufficient to justify the conviction of the prisoner. *R. v. Dowey*, 37 L. J. M. C. 52. The crime of obtaining goods by false pretences is complete, although at the time when the prisoner made the pretence, and obtained the goods, he intended to pay for them when it should be in his power to do so. *Reg. v. Naylor*, 1 Cox, C. C. 151; 1 L. R., C. C. R. 4. 11 Jur. N. S. 910; 35 L. J., M. C. 61; 13 L. T., N. S. 381, C. C. R. A false representation that a stamp on a watch was the hall mark, and that the number 18, part thereof, indicated that the watch was made of eighteen-carat gold, is an indictable offence, although some gold was proved to have been contained in its composition. *Reg. v. Suter*, 17 L. T. N. S. 177. *Reg. v. Levine*, 10 C. C. C. 374. So a misrepresentation as to the postage payable for a letter by a postman. *R. v. Byrne*, 10 C. C. C. 369.

[1] The indictment for obtaining goods by false pretences must state the false pretences with certainty, so that it may clearly appear that there was a false pretence of an existing fact. *Reg. v. Henshaw*, 1 L. & C., C. C. 444; 9 Cox, C. C. 472; 10 Jur. N. S. 595; 33 L. J., M. C. 132. Where an indictment alleged that the prisoner pretended to A.'s representative that she was to give him 20*s.* for B., and that A. was going to allow B. 16*s.* per week:—*Held*, that it did not sufficiently appear that there was any false pretence of an existing fact. *Id.* To prevent a person indicted for false pretences from being acquitted on the ground that the offence is that of felony (24 & 25 Vic. c. 96, s. 88), the false pretences laid must be proved, for under the statute he is to be found guilty of the misdemeanour. *Reg. v. Bulmer*, 1 L. & C., C. C. 476; 9 Cox, C. C. 492; 10 Jur. N. S. 684; 33 L. J. M. C. 171; 10 L. T., N. S. 580. Where a prisoner, being employed at an hospital, wrote to the prosecutor, as manager, for a small quantity of linen, not saying it was for the hospital, and in point of fact he was not manager, and the goods were really ordered for himself, but not sent, on an indictment for an attempt to obtain them, the question left to the jury was, whether he ordered the goods as for and on behalf of the hospital or in his own name, there being no evidence of an intention to pay cash, but evidence of its absence. *Reg. v. Franklin*, 4 F. & F. 94. The venue must be laid in the county where the goods are obtained. *R. v. Stanbury*, 31 L. J. M. C. 88; 1 L. & C. 128.

[2] By 28 & 29 Vic. c. 45, the fees payable in the common law courts to be collected by means of stamps. 29 & 30 Vic. c. 76, pro-

FELO DE SE.[1] 4 Abr. 449. *See post*, Murder; Suicide.

FELONY. 4 Abr. 449. Conveyance of Property after Commission of.[2] *See* Particular Felonies.

FENCES. 4 Abr. 452.[3] *See* Negligence; Nuisance; Party Walls.

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vides for the collection of fees payable in public departments and offices by stamps. *Id.* c. 100. As to cancelling, *see* 35 L. J. Ex. 28. A marriage fee cannot be claimed of common right, but may be due by custom. *Bryant v. Foot*, 7 B. & S. 725; 36 L. J. Q. B. 65; 16 L. T., N. S. 55; 37 L. J. Q. B. 217. Such a right may be disproved by proof of its "being rank," *i. e.* so large that it could not possibly have existed at the commencement of the time of legal memory. Where a new district or consolidated chapelry is formed out of several parishes, the words "such incumbent" means the incumbents of all the parishes out of which the new district has been formed, and to render it a separate parish for ecclesiastical purposes during the then incumbencies, it is necessary that all the incumbents of the old parishes shall have relinquished the fees in the new district. Such relinquishment need not be in writing, and it may be by implication. *Jones v. Gouch*, 11 Jur. N. S. 251.

[1] The English law of *felo de se* and forfeiture of goods and chattels, does not extend to a native Hindoo, though a British subject, committing suicide at Calcutta. *Adv.-Gen. (Bengal) v. Ranee Surnomoye Dossee*, 2 Moore, P. C. C., N. S. 22.

[2] A voluntary settlement of personal estate, executed in favour of a wife and children, after commission of a felony, but before and in fear of conviction, is invalid against the Crown. *Saunders, In re Saunders v. Watson*, 4 Giff. 179; 9 Cox, C. C. 279; 32 L. J. C. 224; 7 L. T., N. S. 704. After the commission of a felony, and before his conviction, a felon may sell or assign over his personal property for valuable consideration; and a debt existing at the time of the commission of the offence is a sufficient consideration to support such an assignment. But the sale must be *bonâ fide*, and not colourable and merely for the purpose of avoiding the forfeiture on conviction. *Chowne v. Baylis*, 31 Beav. 351. The civil remedies for suing the felon, which belong to the person whose property has been feloniously taken, are suspended, after the discovery of the commission of the offence, until the conviction of the felon, in order that the dignity of the law may be vindicated by the prosecution and conviction of the felon. But it is indifferent by whom the felon is prosecuted. *Id.* In felony there can be no new trial. *Att.-Gen. N. S. Wales v. Bertrand*, 36 L. J. P. C. 51. On an indictment for felony evidence will be allowed of subsequent acts which are in substance a continuity of the same offence; unless, where there are several charges in the indictment, and the judge obliges the prosecutors to elect on which count they will proceed, which the judge will not do where the acts are in substance part of the same transaction. Here the charge was for violating a child, and subsequent similar acts were allowed in evidence. *See post*, 3556. *Reg. v. Reardon*, 4 Fost. & Fin. N. P. Cas. 76. It is not a felony under 24 & 25 Vic. c. 4, to counsel, procure, or command another to commit a felony, where no principal felony has been committed; but the offence continues to be a misdemeanour as before that act. *Semble*, an indictment charging a soliciting and inciting to commit a felony is not equivalent to a counselling, procuring, or commanding to commit a felony. *Reg. v. Gregory*, 36 L. J. M. C. 60.

[3] Where land, part of the waste of a manor, was granted away by the lord of the manor, and afterwards an adjoining part of the waste was allotted and granted to another person under an Inclosure Act, the proper inference, in the absence of evidence on whom the liability to maintain the boundary fences rests, is, that the liability is upon the original grantee. *Barber v. Whiteley*, 34 L. J., N. S. 212. The owner of land adjoining a public road is under no obligation to fence excavations in his land, unless they are so near to the road as to be dangerous to persons lawfully using it. *Binks v. South Yorkshire Railway and River Dun Company*, 3 B. & S. 244; 32 L. J. Q. B. 26; 7 L. T., N. S. 350. A plaintiff negligently fastened his horse by the bridle to a railing in the open yard of a public-house, within which he remained for two hours. The highway leading from the house crossed a railway on a level, and the company had set up gates across both ends of the highway at the crossing. The gates opened outwards from the railway, and closed with a catch, but were easy to open. During the plaintiff's absence the horse escaped from the railing, owing to the negligent fastening, strayed to the highway and along that to the crossing, and, the gate there not being closed, through the gateway to the railway, where it was killed by a passing engine:—*Held*, that, under 5 & 6 Vic. c. 55, s. 9, an obligation was imposed on the company to keep the gates closed against stray cattle on the highway; that the accident had been caused by their statutory misconduct; and that the plaintiff was entitled to recover the value of the horse. *Dickinson v. London and North Western Company*, 1 H. & R. 399. Through defect of fences which it was the duty of the defendant to repair, his mare strayed in the night-time from his close into an adjoining field, and so into a field of the plaintiff's in which was a horse. From some unexplained

FERRY.[1] 4 Abr. 454.

FIERI FACIAS. 4 Abr. *See* also Execution.

I. When it may be Issued.[2]

II. Of the Execution of the Writ, and what Property may be Seized, and when.[3]

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cause, the animals quarrelled, and the result was that the plaintiff's horse received a kick from the defendant's mare, which broke his leg, and he was necessarily killed:—*Held*, that the defendant was responsible for the mare's trespass, and that the damage was not too remote. *Lee v. Riley*. 18 C. B., N. S. 722; 11 Jur. N. S. 822; 34 L. J. C. P. 212; 12 L. T. N. S. 388.

[1] The plaintiffs, claiming to be owners of an ancient ferry, sued the defendants for carrying passengers within the line and termini of their ancient ferry, and also for carrying near such line with the intention of evading the said ferry. The new ferry which had been set up by the defendants, and was complained of, was situate 1280 yards from the old ferry:—*Held*, that the limits of the old ferry must be ascertained by user; that by the user the old ferry was limited to the line between Potter's Ferry stairs and Greenwich, and did not extend to all parts of the coast of the Isle of Dogs; and that, therefore, the defendants had not carried in the line of the plaintiff's ferry. *Newton v. Cubitt*, 31 L. J. C. P. 246. Affirmed on appeal, 13 C. B. N. S. 864, Exch. Cham.: —*Held* also, that the proper mode of grants for ferry is to make it lie between the point where a highway comes down to the water's edge to a point on the opposite side, or to a hill. *Id.* And where an act of parliament conferred a *quasi* right of ferry, limited to Sundays, but without imposing the obligation of maintaining the ferry, a court of equity will not protect this monopoly as it would an ancient ferry, on the ground of obligation to maintain the ferry at all times. *Letton v. Gooden*, 2 L. R. Eq. 123; 35 L. J. 427; 14 L. T. 296.

[2] To issue execution on the same day that costs are taxed is an abuse of the procedure of the court, and the costs of such an execution were ordered to be returned. *Cruikshank v. Moss*, 8 L. T. N. S. 439. So where there were two actions by distinct plaintiffs against the same defendant, and writs of *fi. fa.* were issued in each action, and delivered to a bailiff, together with the sheriff's warrant to execute them; and the bailiff thereupon, in execution of one of the writs, seized the defendant's goods, which were insufficient to satisfy the debt and costs in that action: —*Held*, that the second *fi. fa.* was not executed by the seizure under the first; and that issuing a *ca. sa.* in the same action without returning the unexecuted writ of *fi. fa.* was not irregular. *Smith v. Jackson*, 4 F. & F. 352:—*Held*, also, that even if the *ca. sa.* were irregular, the sheriff could not take advantage of his own wrong, by setting up the irregularity as a defence to an action against him for permitting the debtor who had been arrested thereon to escape. *Id.*

[3] The interference of the execution debtor on the sale of the effects, acquiesced in by the bailiff, will not exonerate the sheriff. *Wright v. Child*, 35 L. J. Ex. 209. And where a sheriff seized the goods of E. S., under a *fi. fa.*, delivered to him by L., to whom A. S. was indebted. The writ contained the following indorsement, made by L.: "The defendant is a widow lady, and resides at No. 15 Mespil Parade, Dublin, where she has goods and chattels:"—*Held*, that L. was made liable, as a trespasser to E. S. by the indorsement. *Stratten v. Lawless*, 14 Ir. Com. Law Rep. 432. Rails and other chattels which by the terms of a contract when placed on the land became the absolute property of the company, the contractor to have no property therein, except the right of using them on the land for the purpose of the works, except on completion of the line, as a condition precedent, the plant was to be given to the contractor as part consideration, or if used by the company to be paid for:—*Held*, not liable to be taken in execution for the company's debts. *Beeston v. Marriott*, 4 Giff. 346; 9 Jur. N. S. 960; 8 L. T. N. S. 690. The privilege of exemption from the execution of legal process, which is said to attach to a royal residence, is based solely on the principle that the personal comfort and convenience of the sovereign should not be interfered with; and the privilege consequently does not extend to the precincts of the Palace of Hampton Court, which has not been occupied as a royal residence since the reign of King George the Second. *The Attorney General v. Dakin*, 36 L. J. Ex.; 37 *id.* Ex. Ch. 150. Where a sheriff, after being ruled to make a return to a *fi. fa.*, made a return that he had sold the goods seized, and had received for them sufficient to satisfy the monies directed to be levied; but that he afterwards had notice from the landlord that two quarters' rent was due, amounting to a larger sum; that he had applied to the landlord, but had not been permitted by him to have evidence of his claim; and that though he, the sheriff, had used due diligence, he was unable to ascertain whether the landlord had any just claim in respect of the rent, the court quashed the return for insufficiency, and allowed an attachment to issue. *Hall v. Crawley*, 11 W. R. 344, B. C. An interpleader order directed the sheriff to

III. Setting aside.[1]

IV. Fees and Poundage Payable.[2]

V. Liability of Sheriff and Execution Creditor.[3]

sell goods seized under a *fi. fa.* Before the sale, the judgment debtor became a bankrupt, and the goods were claimed by a messenger of the Court of Bankruptcy, and the sheriff gave up possession to the messenger. The court refused a rule for an attachment against the sheriff for contempt of court in not selling the goods. *Collins v. Cliff*, 11 W. R. 786, Exch. In an action against a sheriff for not levying, although it appears that he was to blame in not doing so, yet, if no actual damage ensued from not levying, as the other creditors would have had it in their power to have obtained a rateable division of the proceeds, the plaintiff is not entitled even to nominal damages. *Hobson v. Thelluson*, L. R. Q. B. 642; 36 L. J. 302. Although as decided by *Siggers v. Evans*, 5 E. & B. 367, an assignment by a debtor of his effects to a creditor as a trustee for himself and all other creditors, passes the property to the trustees at once, though the latter had not assented to it. Yet, where such an assignment is made by a debtor who knows that a writ of *fi. fa.* is in the hands of the sheriff, notice of the writ will be imputed to the assignee, and the right to levy is not defeated. *Id.* As to taking tenants' fixtures, *see* 33 L. J. Ex. 88; 2 H. & N. 777. Where a sheriff has realised the amount of an execution on a *fi. fa.* he cannot justify the retention of the money on the ground that the landlord has made a claim to the whole of it for rent, which claim he has not yet been enabled to prove the truth of; and upon a return to the writ setting forth such facts an attachment will issue. *Hall v. Baden*, 7 L. T. N. S. 721. So where by a building contract between A., the landowner, and B., the builder, A. was to grant leases on the erection of the buildings, and to assist the building operations by making advances to B. according to the progress of the buildings. The 7th clause of the contract stated that all materials and other things brought on the premises by B. for the purpose of erecting the buildings were to be considered as immediately attached to and belonging to the said premises, and were not to be removed therefrom without the consent of A. The 8th clause empowered A. to enter upon and take possession of the land, with all buildings and other materials standing thereon, in case B. should fail to proceed with the completion of the said buildings:—*Held*, that the 8th clause did not qualify the 7th clause, and that the effect of such 7th clause was to give A. such an equitable interest in the materials for the buildings brought afterwards on the land by B. that they could not be taken in execution by a judgment creditor of B. *Brown v. Bateman*, 36 L. J. C. P. 134.

[1] The defendant's goods having been taken under a *fi. fa.* after the debt and costs had been paid by another party liable upon the same instrument, he applied to a judge to set aside the execution. The judge made the order, but imposed as a term that the defendant should bring no action. Having availed himself of the order so as to get the sheriff to withdraw from possession:—*Held*, that the defendant could not afterwards move to set aside so much of it as restrained him from bringing an action. *Wilcox v. Odden*, 15 C. B. N. S. 837. So where execution has been levied prematurely, and the defendant applies to a judge at chambers to set aside the *fi. fa.* &c, with costs, the judge, in making such order, has a discretion to impose the terms of bringing no action; and the Court refused to review such discretion. *Bartlett v. Stinton*, 1 L. R. 1 C. P. 483; 35 L. J. 238, C. P. After a petition has been presented for the winding-up of a company, the court has jurisdiction under the 85th section of the Companies Act 1862, to restrain the sale by the sheriff of property of the company, seized under a writ of *fi. fa.* before the presentation of the petition. *Re Hill Pottery Company*, 1 Law Rep. Eq. 649. After the sheriff had seized under a *fi. fa.*, the execution debtor executed a deed under the Bankruptcy Act of 1861, which was duly registered and gazetted. On an application by the debtor to the court, the sheriff was, under sect. 198, directed to withdraw. *Rogers v. Roberts*, 2 L. R. Exch. 35; S. P. *Marks v. Hall*, 2 L. R. Q. B.

[2] To entitle the sheriff's officer to charge poundage and other fees, under a writ of *fi. fa.* he must have made an actual seizure before tender of payment. *Nash v. Dickinson*, 1 L. R. 2 C. P. 252. A sheriff is not entitled to deduct the expenses of advertising a sale by public auction of an execution debtor's effects, seized under a *fi. fa.*, although the debt or damage exceed 50*l.*, and 24 & 25 Vic. c. 154, s. 74, renders it imperative on the sheriff in such case to advertise and sell by auction. *Braithwaite v. Marriott*, 1 H. & C. 591; 7 L. T. N. S. 363.

[3] Although a sheriff's officer in possession yielded in some respects to the desire of the execution debtor in reference to the sale, yet the sheriff was held not to be discharged thereby, in respect of negligence and want of proper care by the officer in the conduct of the sale. *Wright v. Child*, 1 L. R. 358; 35 L. J. 209. An execution was issued at the suit of A. The bailiff broke and entered the house and took away the goods of another person than the execution debtor. The owner of the house and goods, Mrs. J., gave notice to the bailiff that they did not belong to the execution debtor, and the

FINE. *See* Contempt.

FINES and Recoveries, and Acknowledgment by Married Women.[1]

FIRE BRIGADE (Metropolis.) *See* 3 & 4 Wm. 4, c. 9, and 28 & 29 Vic. c. 90, s. 35.

FIREWORKS.[2] 4 Ab. 1466. *See post*, Gunpowder.

FISH and Fisheries. 4 Ab. 466. As to Salmon Fisheries, *see* 24 & 25 Vic. c. 109; 28 & 29 id. c. 119; 29 & 30 id. 485, c. 102. As to Oyster and Mussel Fisheries, *see* 29 & 30 Vic. c. 85.

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II. Salmon Fisheries, p. 204.
III. Oyster Fisheries, p. 205.
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V. Suits and Proceedings connected with, p. 205.

Fisheries (Public).[3] *See* as to Sea Fisheries, 31 & 32 Vic. c. 45.

bailiff communicated this to A. A.'s attorney wrote in reply to the bailiff: "My client has handed me yours of the 8th inst. She thinks Mrs. J.'s claim has no foundation, but declines to give you any instructions. You will please to do what is right in the matter:" —*Held*, that this did not render A. liable for the wrongful acts of the bailiff. *Jones v. Smith*, 16 L. T. N. S. 609. An execution creditor is not liable for a statement made by him merely as directions to the sheriff, though the latter be thereby misled. *Childers v. Wooler*, 2 El. & El. 287.

[1] Before 3 & 4 Wm. 4, c. 74, a fine was necessary to pass the interest of a married woman in that part of her fee-simple estate which did not belong to her husband; and since that statute a deed duly acknowledged by her under the 77th section is necessary for that purpose, notwithstanding that the estate of the wife may be given to her for her separate use. *Lechmere v. Brotheridge*, 9 Jur. N. S. 705; 32 L. J. C. 577; 8 L. T. N. S. 751. But where a married woman has an estate for life for her separate use, in freehold hereditaments, she can alienate that estate without any acknowledgment under the statute; she may also in like manner deal, without a deed acknowledged, with personalty, to which she is absolutely entitled for her separate use. *Id.* The proviso in section 38 of the 3 & 4 Wm. 4, c. 74, protecting a disposition to a purchaser for value without notice, does not require that the disentailing instrument should pass the estate to the purchaser. It is sufficient if it forms part of a transaction in respect of which the person claiming the benefit of the proviso is such a purchaser. *Crocker v. Waine*, 33 L. J. Q. B. 316; 12 W. R. 905; 10 L. T. N. S. 600.

[2] Information charging L. with making and keeping fireworks, explosive preparations, and compositions in a building wherein by 23 & 24 Vic. c. 139, it was not lawful to make and keep them, it appeared that fog signals were manufactured and kept upon his premises, that he had not obtained a license for their manufacture, and that his premises were within the specified distance from other buildings. Fog signals are concave pieces of tin filled with gunpowder and fitted with nipples and percussion caps, and then firmly attached to each other, in order to secure the greatest amount of explosive power. The construction of them is attended with some degree of danger to the persons employed in the manufacture:—*Held*, that L. was liable to a penalty. *Bliss v. Lilley*, 3 B. & S. 128; 9 Jur. N. S. 410; 32 L. J. M. C. 3; 7 L. T. N. S. 319.—*Semble*, per Wightman, J., that fog-signals are fireworks, within sect. 7; and per Blackburn and Mellor, JJ., L. was liable for making them in a place not licensed, contrary to sect. 6. *Id.* Chancery will, at the suit of a private individual, restrain an adjoining occupier of land from holding public entertainments thereon, consisting of fireworks, &c., whereby he causes the collection of disorderly crowds outside his grounds, which amounts to a nuisance. *Walker v. Brewster*, 37 L. J. 33; 17 L. T. 135.

[3] The soil of a navigable tidal river, so far as the tide flows and reflows, is *primâ facie* in the Crown, and the right of fishery in the public. *Malcolmson v. O'Dea*, 10 H. L. & C. 593. By the general custom of the Greenland whale fisheries, a whale does not become appropriated by merely being harpooned; it is necessary that the line should remain attached to the boat. The whale is then a fast fish. If the line gets detached the whale becomes a loose fish, and is consequently the lawful prey of any one who captures and secures it. *Aberdeen Arctic Company v. Sutter*, 4 Macq. H. L. Cas. 335. One who destroys fishing-nets in a tidal river, under the 24 & 25 Vic. c. 109, s. 11, may justify, as having acted under the order

II. To Salmon Fisheries.[1]

of a conservator of the river in question, although the nets were taken in a part of the river where it flows through a county for which he is not conservator. *Williams v. Blackwell*, 9 Jur. N. S. 579; 32 L. J. Exch. 174; 11 W. R. 621; 8 L. T. N. S. 252. Plaintiff claimed to be entitled to have a license to dredge oysters in defendants' fishery on payment of 2*l.* 2*s.* either as the fixed or a reasonable fee; the fee had been 2*l.* 2*s.* for 150 years; but defendants had refused to grant a license unless 3*l.* 3*s.* was paid:—*Held*, that plaintiff must show that he paid or tendered a reasonable fee; that an advance of 50*l.* per cent on a fee received 150 years ago was not unreasonable; that the onus lay on plaintiff to show that it was, and that as he had not done so, he was not entitled to succeed. *Mills v. the Mayor of Colchester*, 37 L. J. C. P. Ex. Ch. 278.

[1] 27 & 28 Vic. c. 84, continues the 24 & 25 Vic. c. 109, Salmon Fishing Act for England, as to the appointment of inspectors, s. 31, to 1st October, 1865. The 28 & 29 id. c. 121, confers jurisdiction on Secretary of State to form fishing districts, &c. The 26 Vic. c. 10, prohibits the exportation of salmon. Where the justices of a county determine to form a particular part of a river in their county into a fishery district, and apply to the Secretary of State under section 4 of 28 & 29 Vic. c. 121, for that purpose, the Secretary of State has full power to alter the limits of such proposed fishery district. *Reg. v. Sir George Grey*, 1 L. R. Q. B. 469; 35 L. J. M, C. 198; 12 Jur. 85; 14 L. T. 677. A fishing mill-dam is a fishery within the meaning of sect. 20 of the 24 & 25 Vic. c. 109. *Hodgson v. Little*, 14 C. B. N. S. 111; 9 Cox, C. C. 327; 32 L. J. M. C. 220; 8 L. T. N. S. 358. A proprietor or an occupier of a fishing mill-dam on a salmon river is bound by the 24 & 25 Vic. c. 109, during the close season, to remove all obstructions to the free passage of fish up the stream, even though he had ceased to use the dam for the purpose of fishing. *Id.* The taking of salmon in a cage contiguous to a mill-dam is illegal, under 24 & 25 Vic. c. 109, although the cage is held under an immemorial right, as required by sect. 11, and belongs to another owner than the mill-dam. *Moulton v. Wilby*, 9 Cox, C. C. 318; 9 Jur. N. S. 472; 92 L. J. M. C. 164, Exch. A net was secured at one end to a pole temporarily fixed to the soil on the margin of the channels of a tidal river, one-half of the net being stretched across the channel at low water from a boat anchored to a buoy. The fisherman in the boat waited his opportunity, then let out the rest of the net, and rowed round to the pole, thus sweeping the river:—*Held* to be a fixed engine within 24 & 25 Vic. c. 109, s. 11, and 28 & 29 Vic. c. 121, s. 39. A claim to fish in that way by immemorial usage was held to be bad. *Olding v. Wild*, 14 L. T. N. S. 402, Q. B. A net fixed at the bottom of the river by means of a stone placed on the lower edge, so that when a salmon strikes the net it breaks away from the stone and becomes entangled round the fish, is not a fixed engine within the meaning of this section. *Thomas v. Jones*, Q. B. 13 W. R. 154. Where in a salmon fishery a person uses any instrument, or device, whereby salmon may be caught, he is bound to take out a license, otherwise he is liable to a penalty, and it is unnecessary to prove that he intended to catch salmon. *Lyne v. Fennell*, 3 L. R. Q. B. 156; 37 L. J. M. C. 55. The bare use of instruments and devices for catching salmon without a license is an offence. *Lyne v. Lenoud*, 37 L. J. M. C. 55. The intention for which the instruments were used is immaterial. *Lyne v. Fennell*, 3 L. J. N. 26. A right to salmon-fishing being *inter regalia* and a separate tenement, it will not pass by the mere word "pertinents," per L. C.; but a grant by the crown of "fishings" generally, followed by the exercise of the right of salmon-fishing for forty years, will constitute a title to salmon-fishing against the crown. *Lord Advocate v. Sinclair of Forss*, 1 L. R. H. L. Sc. 174. Although in terms 24 & 25 Vic. c. 100, only reserves the right to such dams and fishing-weirs as existed at the time of the act, by virtue of grant, charter, or immemorial usage, yet held that it reserves all then existing rights, however acquired. *Rolle v. Whyte*, 3 L. R. Q. B. 286; 37 L. J. 105; 17 L. T. 560. A person having the exclusive right of fishing in a river and its tributaries, so far as the same are frequented by salmon, is within 26 & 27 Vic. c. 114 (Irish), s. 3. *Antrim (Earl), Ex parte—MacNaughten, Ex parte*, 15 L. T. N. S. 54—Ir. Q. B. A net six yards in length, and one yard sixteen inches in depth, and stretched across a river by means of corks and lead, and fastened at one end to a large stone lying on the bank of the river, which keeps the net in its place, but gives way as soon as a salmon touches the net, which then rolls up, and the salmon gets entangled and dies, is not a fixed engine or net temporarily fixed to the soil, and as such illegal, under 24 & 25 Vic. c. 109, s. 11. *Thomas v. Jones*, 11 Jur. N. S. 306; 34 L. J. M. C. 45, Q. B. Presumption may arise from immemorial usage of a right to put fixed engines. *Rawdone v. Bockham*, 37 L. J. C. B. 26; 3 L. R. 67. The Commissioners for executing the powers of the Salmon Fishery Act, 1865 (28 & 29 Vic. c. 121), may proceed against the owner of any fishing weir, &c., without the intervention of any prosecutor; but any prosecutor who actually appears, and becomes respondent in an appeal to a superior court, may be ordered by the court to pay costs according to the ordinary practice in cases stated under 20 & 21 Vic. c. 43. *Garnett v. Bockhouse*, 37 L. J. Q. B. 228; 32 R. Q. B. 30.

III. Oyster Fisheries.[1]

IV. Private Fisheries.[2]

V. Suits and Proceedings connected with.[3]

FIXTURES.[4] 4 Ab. 474. *See* Distress.

[1] *See* 29 & 30 Vic. c. 85, an act to facilitate the establishment and maintenance of oyster and mussel fisheries. *See* 2 Geo. 2, c. 19.

[2] In the absence of proof to the contrary, the presumption is that a grantee of a several fishery in a lake, at a free or quit rent, is the owner of the soil. *Marshall v. Ulls-water Steam Navigation Company*, 23 B. S. 732; 9 Jur. N. S. 988: 32 L. J. Q. B. 139; 8 L. T. N. S. 416. A lord of a manor by deed granted and enfeoffed to M. part of his fishery, to hold to M., his heirs and assigns, at a yearly free or quit rent. On the deed, livery of seisin was indorsed:—*Held*, that M. was entitled to maintain an action against a wrong-doer for the erection of a pier on the soil of the part of the fishery so granted. *Id.* The 2 & 3 Wm. 4, c. 71, does not apply to easements or profits *à prendre* in gross, *e.g.*, to a claim of a free fishery in the waters of another. *Shuttleworth v. Le Fleming*, 19 C. B. N. S. 687; 11 Jur. N. S. 840; 34 L. J. C. P. 309: 14 W. R. 13. Though Magna Charta made illegal all grants by the Crown, of a several fishery in a navigable river, which had not been in existence in the reign of Henry II., yet if evidence is given of long enjoyment of a fishery there to the exclusion of others, presumption is that it became such in due course of law, and must have been created before legal memory. *Malcolmson v. O'Dea*, 9 Jur. N. S. 1135; 12 W. R. 178; 9 L. T. N. S. 93.—H. L. A dam erected solely for the purpose of diverting water to a mill, is not brought within the meaning of a "fishing mill-dam," merely from the incidental circumstance that occasionally the dam facilitates the catching of salmon by reason of its rendering the river below the dam almost dry except as to pools. And the Commissioners of Fisheries have no power over such a dam. But if the proprietor of the mill take salmon by means of the facility caused as above, he is liable to the penalty imposed by section 12 of the first act. In appeals under the Fishery Act, the party setting the law in motion is entitled to begin. *Garnett v. Backhouse*, 3 L. R. Q. B. 30; 37 L. J. 1; 17 L. T. 170.

[3] Information charging A. with having in his possession the young of salmon, to wit, samlets, contrary to 24 & 25 Vic. c. 109, s. 15, the justices dismissed the information, on the ground that A., though he had taken samlets, and had them in his possession, did not know that they were samlets:—*Held*, that the information was rightly dismissed. *Hopton v. Thirlwall*, 12 W. R. 72; 9 L. T. N. S. 327.—Q. B. A person charged with unlawfully and wilfully destroying fish in a non-navigable river, contrary to the provisions of 24 & 25 Vic. c. 96, s. 24, set up a *bonâ fide* claim of right to fish in that river on the ground that the public had fished there without interruption for sixty years:—*Held*, that the mere assertion of such a claim, being a claim of right impossible at law, did not oust the jurisdiction of the justices. *Hudson v. M'Rae*, 12 W R. 80.—Q. B.; though the belief of the person charged under the 24 & 25 Vic. c. 96, s. 24, for unlawfully and wilfully destroying fish. *Id.* But they ought not to convict where there is reasonable evidence to show that the question of title raised by the defendant is *bonâ fide*. *Reg. v. Stimpson* and *Reg. v. Peck*, 32 L. J. M. C. 208; 8 L. T. N. S. 536.—Q. B.; see *Reg. v. Ballycastle* (*Magistrates*), 9 L. T. N. S. 88.—Ir. Q. B. In answer to an information under 24 & 25 Vic. c. 109, s. 11, for catching salmon with fixed engines in tidal waters, where all the Queen's subjects have a right to fish, the defendant gave evidence that his father and his family and others of the public had for more than forty years been accustomed to fish for salmon in the *locus in quo* with stake nets:—*Held*, not evidence of any ancient right or mode of fishing exercised at the time of the passing of the act, within the exception in s. 11. *Bevins v. Bird*, 12 L. T. N. S. 306.—Q. B.

[4] On sale of fixtures there is no implied warranty of title. *Baguley v. Hawley*, 36 L. J. C. P. 328. An hydraulic press which was brought into a factory by the occupier for his greater convenience, not being necessary for the carrying on of the factory, and which was affixed to the freehold with mortar, the flooring joists being removed:—*Held*, not to be part of the freehold, but passed to the assignees in bankruptcy of the occupier. *Parsons v. Hind*, Q. B. 14 W. R. 860. Trade fixtures, which may be removable as between landlord and tenant, are not necessarily removable as between mortgagor and mortgagee, even though they be affixed to the freehold only for more convenient use, and not for the permanent improvement of the inheritance, and though they be removable without appreciable damage to the freehold. *Climie v. Wood*, 37 Law J. Rep. Exch. 158. Tenants' fixtures are not chattels until severed; and it is competent to a landlord to make an agreement with his tenant which shall, without an abandonment by the tenant of his property in such fixtures during the term, in the event of an execution against the tenant, enable the landlord to re-enter and retain such fixtures against the execution creditor. *Dumurgue v. Rumsey*, 12 W. R. 205; *see* 18 L. T. 300. A tenant for life of

FORBEARANCE.[1]

FORCIBLE Entry and Detainer.[2] 4 Abr. 485.

FOREIGN Attachment. 4 Ab 488. *See* 20 & 21 Vic. c. 157, Amending Practice in Mayor's Court.

I. Of the Nature and Effect of in General.[3]

estates built a house, and some of the rooms, instead of being papered, were panelled and ornamented with costly tapestry fixed in the ordinary manner; the building was also decorated with some marble figures, vases, &c.:—*Held*, that although all these were easily removable, yet that as they formed part of the building itself, the tapestry (also a painting let in) being considered a part of the wall itself, and the marble figures, vases, &c., being a part of the architectural design, none of them passed by the will of the tenant for life. *D'Eyncourt v. Gregory*, 3 L. R. Eq. 382; 36 L. J. 107; *Sumner v. Bromilow*, 34 L. J. N. S. 130, 23; *Duke of Beaufort v. Bates*, 3 De G. F. & J. 381. A mortgagee, as against the assignees of the tenant of the mortgagor, is entitled to trade fixtures affixed to the freehold by such tenant subsequently to the date of the mortgage. *Ex parte Cotton*, 2 M. D. & D. 725. *Cullwick v. Swindell*, 1 L. R. 3 Eq. 249; 36 L. J. 173; *Sumner v. Bromilow*, 34 L. J. Q. B. 130. An agreement with a company to grant them a lease, as soon as they had spent 3000*l.* "in the erection of permanent buildings and works," and a covenant to cover in the "erections" and buildings when necessary:—*Held*, that "erections" might include trade fixtures. *Bidder v. Trinidad Petroleum Company*, 17 W. B. 153. *See Sumner v. Bromilad*, 34 L. J. Q. B. 130. A railway company gave notice to take part of a manufactory, and was required by the owner to take the whole. A valuer, on behalf of the company, went to the manufactory, and, without entering it, valued it at a specified sum, and that amount was paid into court in the usual way. The company was then proceeding to take possession, and to issue its warrant to summon a jury, when the owner of the manufactory insisted that the valuation had not included certain fixtures upon the premises, such as a steam-engine, shaping and turning lathes, &c., and that the company was bound to take such fixtures. The company contended that the fixtures being trade fixtures, and removable by the owner, he could not compel the company to take them. The owner filed a bill, and moved for an injunction to restrain the company from taking possession, or summoning a jury, without making compensation for the fixtures:—*Held*, that although the fixtures were trade fixtures, which the lessee might remove during the term, the company was bound to take them; and that whatever a railway company is bound to take under section 92, they must, in proceeding under section 85, cause to be valued, and pay the value into court. *Gibson v. Hammersmith Railway Company*, 9 Jur. N. S. 221; 32 L. J. Chanc. 337; 8 L. T. N. S. 43.

[1] Where a creditor demands, and a debtor promises, security for an existing debt, the forbearance to sue implied on the part of the creditor is a sufficient consideration to prevent the transaction from being a *nudum pactum*. *Alliance Bank v. Brown*, 10 Jur. N. S. 1121; 11 L. T. N. S. 332.

[2] V. having been in possession of a house from May to October, the defendants called there, and, insisting that V. had no title, proceeded to take the keys out of the room doors. Upon their doing so, V. gave them into custody for stealing the keys; but the magistrate refused to detain them. They then returned to the house, and having procured a sledge-hammer, forced the inner door of the hall, and some having entered that way, and some by a staircase window, overpowering the prosecutor's opposition, and furnished with a hatchet and other weapons, after a struggle which caused a disorderly crowd to assemble, they ejected the prosecutor and his servants. From the commencement of the proceedings till the conclusion, a female servant of the prosecutor's was in the kitchen:—*Held*, assuming the title of the prosecutor to have been bad, and that the defendants had acted by the orders of those who had a good title to the premises, that the evidence was sufficient to support a conviction of the defendants for a forcible entry and riot. *Reg. v. Studd*, 14 W. R. 806; 14 L. T. N. S. 633.—C. C. R.

[3] A custom of the city of London, on a plaint being entered in the Lord Mayor's Court, to attach a debt due to a party from a third person, upon his being found within the jurisdiction, though none of the parties are citizens or residents within the city, and neither the original debt nor that due from the garnishee accrued within the city, is void in law. *Cox v. London* (*Mayor, &c.*), 1 H. & C., 338; 2 *id.* 407; 32 L. J. Exch., 64. Affirmed on appeal, 9 Jur. N. S. 800; 32 L. J. Exch. 282; 36 id. H. L. 335; 8 L. T. N. S. 700.—Ex. Ch. *Morris v. Latour*, 9 L. T. N. S. 767.—C. P. Proceedings in foreign attachment, were commenced in the Mayor's Court of the city of London against A., who at that time was dead, and judgment of attachment against a debt due to A. by B. was recovered. The administratrix of A. brought her action against B. to recover the debt:—*Held*, that the proceedings in foreign attachment were null and void, and that a plea of payment to the plaintiffs in the attachment suit, after the

II. Of the Property Attachable under it.[1]

III. Proceedings against the Garnishee.[2]

IV. Maliciously Issuing.[3]

FOREIGN Enlistment.[4]

FOREIGN Jurisdiction Acts. 6 & 7 Vic. c. 94; 29 & 30 id. c. 87.

FOREIGN Laws and Customs.[4] 4 Abr. 494.

I. A Contract or Title is Expounded according to the Law of the Country in which it was Made.[5]

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latter action was brought, was not available; and further, that a custom that the administratrix might have appeared and defeated the attachment, but that not having done so she was barred, would be bad. *Mathey v. Wiseman*, 34 L. J. N. S. 216. Pledged property cannot, after it has been equitably assigned, be attached by a creditor, although no notice of the assignment has been given to the garnishee. *Robinson v. Nesbitt*, 37 L. J. C. P. 124. The Court will take judicial notice of the custom of foreign attachment and of the official seal attached. *Jeffs v. Day*, 12 L. T. N. S. 852. A debt which has been attached in the Lord Mayor's Court, is not sufficient to support a petition for winding up a company. *European Bank, in re, ex parte Baylis*, 35 L. J. Chanc. 690.—V. C. K. Where there are proceedings contemporaneously taken in the Mayor's Court, and in one of the Superior Courts, the plaintiff may be called upon to elect. *Frith v. Guppy*, 1 L. R. C. P. 32; 12 Jur. N. S. 1001.

[1] A foreign attachment can only affect monies for which the debtor himself could maintain an action at the time of the attachment. *Webster v. Webster*, 31 Beav. 393. Attachment of the produce of the sale of a commission in the army, in the hands of the army agents, held ineffectual as against the lien and right of set-off of such agents, and as against a prior equitable assignment. *Id.* The serving of an order of attachment does not place goods in *custodia legis*, so as to justify a defendant in detaining them. *Pillott v. Wikinson*, 11 *id.* 347; 10 Jur. 991, Ex. Ch.: 8 L. T. N. S. 360.—Exch. See *Nelson v. Barter*, 10 Jur. N. S. 832; 33 L. J. Chanc. 705; 12 W. R. 1043; 10 L. T. N. S. 743.—C.—L.J. Although according to the practice of foreign attachment in the Lord Mayor's Court, rent could not be attached; yet under 20 & 21 Vic. c. 157, rent, when it becomes due, is a "debt" which may be attached under a garnishee order in the hands of the tenant, who becomes a garnishee. *Mitchell v. Lee*, 2 L. R. Q. B. 259; 36 L. J. 154.

[2] A garnishee, against whom a judgment creditor has obtained leave to proceed by writ, calling upon him to show cause why there should not be execution against him under the 17 & 18 Vic. c. 125, s. 64, cannot be held to bail or arrested under 1 & 2 Vic. c. 110, s. 2. *Horner v. Luff*, 3 B. & S. 818.

[3] In a declaration for maliciously and without reasonable or probable cause issuing out of the Mayor's Court, London, an attachment of a debt owing from third persons to the plaintiff, it must appear that the action in which the attachment issued was terminated. *Parton v. Hill*, 12 W. R. 753; 10 L. T. N. S. 414.—Q. B.

[4] The building, in pursuance of a contract, with intention to sell and deliver to a belligerent power, the hull of a vessel suitable for war, but unarmed, and not equipped, furnished, or fitted out with anything which enables her to cruise or commit hostilities, or do any warlike act whatever, is not a violation of the Foreign Enlistment Act, 59 Geo. 3, c. 69. *Attorney-General v. Sillem; The Alexandra*, 2 H. & C. 431; 10 Jur. N. S. 262; 33 L. J. Exch. 92; 11 L. T. N. S. 223. On an indictment against a shipping agent for hiring persons to enter the service of a belligerent power it appeared that the defendant hired the parties for a voyage to China, but that when in the Channel the ship fell in with a steamer, from which she received guns and ammunition, and the men were then enlisted into the belligerent's service by the captain of the ship. The judge directed the jury that, if the defendants procured the parties to embark from the English port for the purpose of being enlisted by the belligerent, whether those parties knew of such purpose or not, they should find the defendants guilty. *Reg. v. Jones*, 4 F. & F. N. P. 25. See also *Reg. v. Rumble, id.* 175; *Reg. v. Corbett*, 4 F. & F. 555.

[5] It is established as a general principle that a legal title, duly acquired, in any one country, is a good title over all the world. *Simpson v. Fogo*, 1 H. & M. 195; 9 Jur. N. S. 403; 32 L. J. Chanc. 249; 8 L. T. N. S. 61. The due acquisition of a legal title to movables may give rise to the question whether the *lex loci contractus*, or the law of the country wherein the contracting parties may be domiciled, or even the *lex loci rei sitæ*, shall prevail. *Id.* But where all these circumstances are combined in the acquisition of a legal title to a mov-

II. But the Proceedings to Enforce the Contract are Governed by the Lex Loci Fori.[1]

III. With respect to Torts committed in a Foreign Country.[2]

IV. Judgments in Foreign Laws, how Proved.[3]

able, such title is, beyond doubt, good all the world over. *Id.* Where assets are distributable, the order and disposition of such assets will be in accordance with the *lex fori* where such assets are distributable, but not where such assets are the produce of a chattel upon which a valid security has been given. *Id. The Halley*, 2 L. R. 2 Ad. & Ecc. 3: 37 L. J. 1; 16 W. R. 284; 17 L. T. 329. An agreement entered into in France, but intended to be carried out in England, of such a nature, that if entered into in England it would have been void for champerty, cannot be enforced in England. *Grell v. Levy*, 16 C. B. N. S. 73; 10 Jur. N. S. 210; 9 L. T. N. S. 721. The English Court of Chancery will appoint guardians to children, subjects of a foreign Crown, who are resident in this country, where it is necessary for their protection. *Nugent v. Vetsera*, 1 L. R. Eq. 704; 35 L. J. 777. In the construction of a foreign document, the judge or court must obtain, first, a translation of the document; secondly, an explanation of any terms of art used in it; thirdly, information on any special law; and fourthly, on any peculiar rule of construction of the foreign state affecting it; and it is the duty of the English court with such light to construe the document. *Di Sora* (*Duchess*) *v Phillips*, 33 L. J. C. 129.—H.L. An order of a foreign court made *ex parte* on a shareholder of an insolvent company to contribute to the assets, is an order or other judicial proceeding within 14 & 15 Vic. c. 99, ss. 7, 11, and may be proved by a certified copy. *Leishman v. Cochrane*, 12 W. R. 181; 9 L. T. N. S. 104.—P. C. Where a question of Scotch law arises, the court has power under the 22 & 23 Vic. c. 63, to order a case to be settled for the opinion of the Scotch court, and, on a return of the judgment of such court, to apply the facts to such decision, and make an order accordingly. *Wilson v. Moore*, 12 W. R. 1137. Where a document purported to be an official copy of a Belgian patent sealed with the Belgian seal, it was admitted without proof of its being an examined copy or proof of the seal, inasmuch as it came within the words, "or other act of state," in 14 & 15 Vic. c. 99, s. 7. *Betts, ex parte*, 9 Jur. N. S. 137; 7 L. T. N. S. 577. C.P.—See 8 L. T. N. S. 172. Certified copies of orders of the Supreme Court at Calcutta, admissible in evidence, under 14 & 15 Vic. c. 99, without proof of the official seals or signatures of that court. *Leishman v. Cochrane*, 1 Moore, P. C. C. N. S. 315; 12 W. R. 181; 9 L. T. N. S. 104.

[1] In considering what power and jurisdiction is conceded to Great Britain within the territories of a foreign state, it must be borne in mind that in transactions, whether political or mercantile, a difference subsists between Oriental and Christian states. *Papayanni v. Russian Steam Navigation and Trading Company*, 9 Jur. N. S. 1160.—P. C. No state can claim jurisdiction as a matter of right within the territorial limits of another independent state *Id.* Between two Christian states all claim to jurisdiction of any kind, or exemption from jurisdiction, must be founded on treaty, or engagements of similar validity. *Id.* Consent may be expressed in various ways; by constant usage, permitted and acquiesced in by the authorities of the state; active assent, or silent acquiescence, where there is full knowledge. *Id.* The court has no jurisdiction to interfere with the sovereign acts of a foreign government. *Gladstone v. Ottoman Bank*, 9 Jur. N. S. 246: 32 L. J. Chanc. 228; 11 W. R. 460.—V. C. W. The recognised sovereign of a foreign country who has been displaced by a usurping government *de facto*, is held here to succeed, upon the restoration of his authority, to all the rights of the usurping government, and to the public property which it has acquired, and he is the proper person to sue in respect of it. *United States of America v. Prioleau*, 11 Jur. N. S. 792; 35 L. J. Chanc. 7; 13 L. T. N. S. 92; 2 H. & M. 55. A foreign republic acknowledged by this country is entitled to sue in the courts of this country in its own proper name, and without putting forward as a co-plaintiff some officer of the state. *Columbian Government v. Rothschild*, 1 Sim. 94; *United States of America v. Wagner*, L. C. & L. J.; L. R. 2 Ch. Ap. 582; 36 L. J. 624.

[2] An action will lie in respect of an assault or other tort committed by an English subject on another English subject beyond this realm, provided that the foreign law prevailing on the spot gave compensation or damages for the offence to the party injured. *Seymour* (*Lord*) *v. Scott*, 1 H. & C. 219; 9 Jur. N. S. 522; 32 L. J. Exch. 61; 8 L. T. N. S. 511.—Ex. Ch. Questions which resolve into matters of procedure are to be governed by the *lex fori*. *Id.* To a count upon a foreign judgment it was pleaded that the foreign court had no jurisdiction, because the defendant in the action there was not a trader and was not resident within a certain district:—*Held*, that the plea was bad, inasmuch as, consistently with it, the foreign court had jurisdiction over the person of the defendant and the subject-matter of the action which was sufficient. *Vanquelin v. Bouard*, 15 C. B. N. S. 341; 10 Jur. N. S. 566; 33 L. J. C. P. 78.

[3] A plea of a judgment of a foreign court

FOREIGN Possession of the Crown. *See* Colonies.

FOREST, and Forest Courts. 29 Vic. c. 62, 66–70. *See post*, Game; Mines.

FORFEITURE.[1] 4 Abr. 499. *See* Attainder; Conditions; Outlawry; Treason.

FORGERY.[2] 4 Abr. 500.

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is not conclusive of a fact not found by that court, or not stated to be, or necessarily being, the ground of the judgment. *Hobbs v. Henning*, C. P. 34 L. J. N. S. 117. A contract between two subjects of a neutral state to export contraband of war to a belligerent is not unlawful in the neutral state. *Chavasse, ex parte in re Grazebrook*, 11 Jur. N. S. 400; 34 L. J. Bank. 17; 12 L. T. N. S. 249. *See* 37 L. J. Ch. 433; id. Ch. 33.

[1] Where circumstances occur which entitle a party to take advantage of a clause of forfeiture, and he does acts which show that he waives the forfeiture (though the acts were such as he was not entitled to do) he cannot afterwards take advantage of the forfeiture. *Ward v. Day*, 33 L. J. Q. B. 254; 12 W. R. 829; 10 L. T. N. S. 578. Ex. Ch.; *Burke v. Prior*, 15 Ir. Chanc. Rep. 106.

[2] Making a false entry in what purports to be a banker's pass-book, with intent to defraud, is a forgery. *Reg. v. Smith*, 1 L. & C. C. C. 168. So forging a document purporting to guarantee a master to a certain amount in money against the dishonesty of a clerk, is forging an undertaking for the payment of money within 24 & 25 Vic. c. 98, s. 23. *Reg. v. Joyce*, 10 Cox, C. C. 100; 1 L. & C. C. C. 576; 11 Jur. N. S. 472; 34 L. J. M. C. 168. A nurseryman and seedsman got his foreman to accept two bills, the acceptances having no addition, description, or address, and afterwards, without the acceptor's knowledge, he added to the direction a false address but no description, and represented in one case that the acceptance was that of a customer, and in the other case that it was that of a seedsman, there being, in fact, no such person at the supposed false address:—*Held*, that in the one case (the former) he was not guilty of forgery of the acceptance, but that in the other case he was. *Reg. v. Epps*, 4 F. & F. 81. On an indictment for forgery, it appeared that the prisoner on the discovery of the forgery being suspected, was asked to write his name for the purpose of comparison, and did so:—*Held*, that this signature was not admissible on the part of the prosecution for that purpose. *Reg. v. Aldridge*, 3 F. & F. 81. On a indictment for forging and uttering a bill, knowing it to be forged, it appearing that the person whose name was used was informed of it at the time, and did not repudiate it, the jury were directed to acquit, though he was called as a witness, and denied any previous authority. *Reg. v. Smith*, 3 F. & F. 504. The drawer of a cheque on a bank which was duly honoured, and returned to him by the bank, afterwards altered his signature in order to give it the appearance of forgery, and to defraud the bank and cause the payee of the cheque to be charged with forgery:—*Held*, that this alteration did not constitute a forgery. *Brittain v. Bank of London*, 3 F. & F. 465; 8 L. T. N. S. 382. — Q.B. Making on a glass plate a positive impression of an undertaking of a foreign state for the payment of money by means of photography, without lawful authority or excuse, is a felony within 24 & 25 Vic. c. 98, s. 19. *Reg. v. Rinaldi*, 1 L. & C. C. C. 330; 33 L. J. M. C. 28; 9 L. T. N. S. 395. A person may be convicted for uttering a forged cheque, where it is proved it was presented for payment abroad, and by the foreign banker presented for payment in this country, and this whether the forgery was or was not committed in this country. *Reg. v. Taylor*, 4 F. & F. N. P. Cas. 511. Engraving in England without authority a bank-note of a company carrying on business as bankers in Scotland, is a felony, 24 & 25 Vic. c. 98. The words of section 55, "Nothing in this Act shall extend to Scotland," were intended only to exclude offences committed in Scotland. Per Kelly, C.B. *Reg. v. Brackenbridge and King*, 1 L. R. 1 C. C. R. 133; 37 L. J. (M. C.) 86; 18 L. T. 369. After a receipt was signed by the person giving it, the person to whom it was given added words above the signature:—*Held*, that it was for the jury to say whether the addition of those words altered the effect of the receipt. *Reg. v. Milton*, 10 Cox, C. C. 364.—Chambers, C. S. S., a registered holder of shares in a company, in which the shares could only be transferred by deed executed by the transferor and transferee, was induced by O., his broker, to intrust him with some forms of transfer signed and sealed by the plaintiff in blank for the transfer of certain shares in another company, which latter shares S. had employed O. to sell for him, intending the blanks to be filled up by O., and the forms to be used for the transfer of such shares. O. having stolen the certificates of the first-mentioned shares from a box of the plaintiff deposited at a bank for safe custody, feloniously filled up the blanks in two of the forms of transfer, with the description of shares in the first-mentioned company, and having forged the attestations, delivered the transfers to *bonâ*

FORMA Pauperis, suing in.[1]

FRANCHISE. 4 Abr. 528. *See* Corporation; Elections.

FRAUD, Effect of on Contract.[2] 4 Abr. 526. *See* Contract; Joint Stock Company.

FRAUDS, Statute of. 4 Abr. 529. *See* Guarantee, p. 220.

I. Of Contracts for Interest in Land, and of Contracts which are not to be Performed within a Year, p. 210.

II. As to Contracts for the Sale of Goods, p. 211.

III. Evidence to explain Contracts, p. 212.

IV. Statute not apply to Primary Liability, p. 213.

I. Of Contracts for Interest in Land, and of Contracts which are not to be Performed within a Year.[3]

fide purchasers for value, and the company removed the plaintiff's name from the register of shareholders, and placed thereon the names of the purchasers. The plaintiff having brought an action against the company to recover the dividends, and claiming a mandamus commanding the defendants to replace his name on their register:—*Held*, that the plaintiff was entitled to judgment; and that the felony of the broker, and not negligence on the part of the plaintiff, was the proximate cause of the injury occasioned by the improper transfer. *Swan v. North British Australasian Company*, 7 H. & N. 603; 32 L. J. Exch. 273. *See* 37 L. J. Q. B. 176; 3 L. R. 584. Upon an indictment for uttering a forged bill, the previous uttering of other bills forged in other names may be given in evidence in proof of guilty knowledge. *Reg. v. Salt*, 3 F. & F. 834,—Williams, J. It is impossible to lay down any general rule as to the time within which such previous uttering must have taken place, in order to be admissible. *Id.*

[1] An order allowing a party to an action to proceed *in formâ pauperis*, only takes effect from the time of the service of it upon the other side. *Fray v. Voules*, 3 L. R. Q. B. 214. Where the common order to sue *in formâ pauperis* has been obtained at any stage of the suit, even after decree, it is unnecessary to obtain an order for leave to appeal without making the usual deposit. *Drennan v. Andrew*, 1 L. R. Ch. Ap. 300. Where the application is by the guardian for leave to appeal *in formâ pauperis*, the court requires an affidavit that the infant ward cannot get a solvent next friend to prosecute the appeal. *Gaudin v. Messery*, 2 Moo. P. C. C. N. S. 372.

[2] A contract to take shares in a company cannot be set aside because it was founded on a prospectus which contains exaggerated views of the advantages of the company, but does not contain any material misstatement of fact. *Denton v. Macneill*, 2 L. R. Eq. 352, 14 W. R. 813,—R. A trader having sold some silver articles, sent to, and seen by, the buyer, at a price calculated at a certain rate on a certain weight of silver, which was paid, afterwards sought to recover the supposed balance of the price upon double the weight of silver, alleging a manifest mistake in the weight, and setting up fraud in the buyer in taking advantage of it. Fraud being negatived by the jury, the verdict was entered for the defendant. *Falock v. Gooch*, 4 F. & F. 589. If a person induces the owner of an article to part with possession, with a view to a particular purpose, for the benefit of the owner, as for a sale, and intending, and fraudulently concealing the intention, to use it for another and different purpose for his own benefit, and inconsistent with the agreement, it is fraud which avoids the agreement. *Bennett v. Dossett*, 4 F. & F. 600. The plaintiff bought of the defendant the household furniture, fixtures, utensils in trade, &c., of a public-house, as per inventory taken by W. W., for 262*l.*, upon a representation by the defendant that the receipts of the house were 80*l.* per month, which representation turned out to be false. In an action for this misrepresentation, the declaration alleged the agreement to be for the purchase of the goodwill, furniture, fixtures, &c.:—*Held*, that the declaration substantially stated the true nature of the agreement, and that, at all events, the court would, if necessary, amend it. *Cater v. Wood*, 19 C. B. N. S. 286. In an action for fraudulent misrepresentation, the plaintiff may recover damages for an injury which is the direct and natural consequences of his acting on the faith of the defendant's representations. *Mullett v. Mason*, 1 L. R. C. P. 559; 35 L. J. C. P. 299; 14 L. T. N. S. 558. *See* 18, id. 293.

[3] A. verbally agreed with B. to allow him to open a quarry, and erect a limekiln, and work the same, on land of which A. was a

tenant, provided B. would pay for any damage which might be done to the land by erecting and working the limekiln and quarry. An action being brought to recover such damages:—*Held*, that this was an agreement to pay for surface damage only, and not for an interest in land; and, therefore that it was not rendered void by the 4th section. *Griffiths v. Jenkins*, 10 Jur. N. S. 207,—Q. B. See *Smart v. Jones*, 10 Jur. N. S. 678; 10 L. T. N. S. 271,—C. P. Nor is a parol agreement between the plaintiff, a boarding-house keeper, and the defendant, for his board and lodging. *Wright v. Stavert*, 2 El. & El. 721. The following letter was written by E. to the plaintiff (after taking the defendant over a house belonging to the plaintiff): "I have at length let Town Walls House, subject to certain alterations and repairs, at 40*l.* per annum. A list of the repairs I herewith send you. I think they are so absolutely necessary and reasonable, that I have at once set Mr. B. upon the work, so as to bind the person who has taken it." The defendant had previously offered to take the house:—*Held*, that the letter was a mere proposal, and did not specify the commencement or the duration of the term, so as to amount to evidence of a contract. *Clarke v. Fuller*, 16 C. B. N. S. 24. And the statute is satisfied by a written proposal containing the terms of the agreement, signed by the party to be charged, proof being given of a subsequent assent to these terms by the other party without writing. *Smith v. Neale* and *Warner v. Willington*. *Reuss v. Picksley*, 35 L. J. Ex. 218; 1 L. R. Ex. 342; 4 H. & C. 588, Ex. Ch. Although, where a written contract for the purchase of land states, with sufficient precision, the subject-matter and the price, the law will imply that the whole interest of the vendor was contracted for; yet, if there is any expression in the contract inconsistent with such an implication, the court will not decree specific performance, the statute of frauds not being satisfied. *Dolliny v. Evans*, 36 L. Q. 474; 15 L. T. 604. A contract of hiring made on the 24th of March, for a year's service, to commence on the 25th, is not void by the 4th section, at least a jury may infer from the payment of wages a new implied contract from the latter day. *Cawthorne v. Cordrey*, 13 C. B. N. S. 406; 32 L. J. C. P. 152. An agreement to pay an annual sum of 20*l.* for the support of a child, then five years old, "until she was able to support herself," is an agreement, "not to be performed within a year from the making thereof," within the meaning of this section, and must therefore be in writing. *Farrington v. Donohoe*, C. P. Ir. Rep. 1 Com. Law, 675.

[1] It is essential names both of vendor and vendee appear on face of contract. *Vandenbergh v. Spooner*, 35 L. J. Ex. N. S. 201; 1 L. R. Ex. 316. See Blackburn on contract of Sale, 55. *Williams v. Lake*, 29 L. J. Q. B. 135. *Caton v. Caton*, 2 L. R. 127, H. L. A contract in writing was made for the sale of goods above 10*l.* in value, to be delivered at a future time. Before the time for delivery arrived the parties made a parol agreement extending the time:—*Held*, that the parol agreement, being invalid under the Statute of Frauds (29 Car. 2, c. 3, s. 17), did not effect an implied rescission of the former contract. *Noble v. Ward*, 2 L. R. Exch. 135; 15 L. T. N. S. 672,—Ex. Ch.; 35 L. J. 81; 36 *id.* 91. Letters passing between a principal purchaser and his agent to purchase goods, if they contain the terms of the contract, constitute a sufficient memorandum in writing, within the 17th section of the Statute of Frauds, to support an action by the vendor for the price. *Gibson v. Holland*, 35 L. J. C. P. 5. In order to satisfy this section, there must be such an acceptance of goods as to show that the person, to whom they have been delivered, has received them under a contract of sale. *Barnett v. Farley*, 11 L. T. N. S. 107. On some act or conduct on the part of the buyer, indicating an intention to retain the goods, or such as reasonably would lead the seller to think they are accepted, and this may be by retention of them for such a time as reasonably might lead to that conclusion. *Bowes v. Pontifex*, 3 F. & F. 739. And not merely conditionally. *Cawthro v. Belleatt*, 3 F. & F. 850. But where a nephew of the plaintiff having a horse to sell, some negotiations took place between them; but as they could not agree as to the price, the horse was not sold; subsequently, however, the plaintiff wrote to his nephew, making an offer for the horse, stating in his letter that he should consider it a bargain if he did not hear to the contrary. His nephew did not reply, and having a sale shortly afterwards of some of his effects, the horse was sold by mistake, the auctioneer having had instructions from the nephew not to sell it. Two days after the sale, the nephew wrote to the plaintiff, the contents of which letter showed that he intended to accept his uncle's offer:—*Held*, in an action by the plaintiff against the auctioneer for the conversion of the horse, that as there was no memorandum in writing, binding the nephew at the time of the sale, and no evidence that he had at that time accepted the offer, the property in the horse had not vested in the plaintiff, and that he could not rely on the subsequent letter of the nephew, as that would not relate back so as to complete the plaintiff's title at the time in question. *Felthouse v. Bindley*, 11 W. R. 429; 7 L. T. N. S. 835,—Exch. Cham. Hops were sold by sample, and before prompt day, the buyer's foreman attended at the warehouse of the sellor's factors to see them weighed, compared each pocket with the sample, and adjusted allowances on some which he ob-

III. Evidence to Explain Contracts.[1]

jected to:—*Held*, that this was a sufficient acceptance to satisfy sect. 17 of the 29 Car. 2, c. 3. *Simmonds v. Humble*, 13 C. B. N. S. 258; 9 L. T. N. S. 168. *Smith v. Hudson*, 8 L. T. N. S. 233. The judge, at the trial, is to decide whether the evidence of a constructive delivery of goods bargained and sold, is sufficient to satisfy the Statute of Frauds. *Kealy v. Tenant*, 13 Ir. Com. Law. Rep. 394,—Q. B. See *Currie v. Anderson*, 2 E. & E. 592; 29 L. J. Q. B. 87. D., a hop-grower, having sent samples of his hops to his factor, E., went to the factor and offered to buy some at 16*l.* 16*s.* a cwt. After some negotiation between E., the factor, and D., the latter agreed to sell the hops at that price, and the factor wrote in his book, in the presence of D. and E., a memorandum of the bargain in duplicate, one part of which he headed with the name of E., and the other part with the name of D. E. requested that the date might be altered, so that by the custom of the hop trade he would have a week's more time for payment. D. consented, and the alteration was made by the factor, who tore from his book the part of the memorandum headed with the name of E., and delivered it to him, and kept the counterfoil in his possession:—*Held*, that there was evidence for the jury that the factor was the agent of both parties for the purpose of drawing a record of the contract binding on them; and that, if he were, the name of E., at the head of that part of the memorandum delivered to him, was a sufficient signature by his agent, within sect. 17 of the Statute of Frauds. *Durrell v. Evans*, 1 H. & C. 174; 9 Jur. N. S. 104,—Ex. Ch. *Watts v. Ainsworth*, 1 H. & C. 83. It is not essential that a memorandum in writing to take the case out of this section should be addressed to the person who is to take advantage of it. *Gibson v. Holland*, 1 L. R. C. P. 1. The plaintiff agreed with the defendants in writing, signed by the defendants, to sell and deliver, at a future day, goods (above 10*l.* in value). Afterwards and before the breach the time for performing the contract was verbally extended for a fortnight:—*Held* (there being neither acceptance nor payment under the verbal arrangement), that the verbal arrangement was void and could not rescind the written contract, which the plaintiff might therefore enforce. *Noble v. Ward*, 4 H. & C. 149. A written admission by a purchaser to his agent, that he had bought certain goods for him, is a sufficient note or memorandum of the bargain between him and the vendor, to satisfy sect. 17 of the Statute of Frauds, *Gibson v. Holland*, 1 H. & R. 1; 11 Jur. N. S. 1022; 35 L. J. C. P. 5; 14 W. R. 86; 13 L. T. N. S. 293. If a parol contract involves several terms, one of which falls within the statute, it cannot be enforced. *Savage v. Canning*, 1 Ir. R. C. L. 434. In order to satisfy the Statute of Frauds there must be an acceptance and actual receipt of the goods, or part of them, with the consent of the vendor; and if before such acceptance the vendor rescinds the contract, the assignees of the buyer, in the case of his bankruptcy, cannot claim them. *Smith v. Hudson*, 6 B. & S. 431. *Semble*, if the assignees do any act to accept the goods, it will take the case out of the statute. *Id.*

[1] The plaintiff, professedly as C.'s agent, sold bark to the defendants at a price to be subsequently ascertained by C. in a manner agreed on, and induced them to sign a bought note, which described the plaintiff as the seller at an ascertained price per ton, by representing that this price was nominal, and that as the defendants were dealing with the Crown, whose officer C. was, they would incur no risk. A day was fixed by the note on which a deposit of twenty per cent was to be paid. The plaintiff had, in fact, himself purchased the bark from C. by verbal contract, but had not paid for it. Afterwards, and before the deposit was paid, the plaintiff sent the defendants an invoice, specifying the quantity of bark, and debiting them, as buyers from himself, with a sum calculated at the price per ton in the bought and sold notes (the real price not having been then ascertained by C.), and requesting them to pay the deposit to C., as originally arranged. The deposit was accordingly paid to C. by the defendants, without objection to the basis on which it was computed. The plaintiff subsequently treated the sale as a sale by himself, as principal, at the price in the bought and sold notes. The defendants thereupon disclosed the whole transaction to C., paid C. the price which he had then ascertained in the manner originally agreed, and took possession of the bark:—*Held*, that parol evidence was admissible to show that the bought and sold notes did not really contain the contract between the parties. *Rogers v. Hadley*, 2 H. & C. 227. That if the bought and sold notes were to be taken as the contract, this contract was avoided by the plaintiff's fraudulent representations, and that there had been no subsequent election by the defendants to adopt it. *Id.* And that the plaintiff was estopped from saying that he was not C.'s agent, and consequently that the settlement between C. and the defendants was an answer to the action. *Id.* A memorandum signed by defendant's agent (J. W.), was entered in plaintiff's book thus,—"Mr. N. thirty-two sacks culasses, at 49*s.*; 280 lbs. to wait orders.—J. W." In an action by N. for non-delivery:—*Held*, that he was entitled to recover; because, though it did not appear by the writing whether he was the buyer or the seller, the surrounding circumstances were admissible, which showed that N. was a baker and defendant a flour-merchant, which supplied the deficiency. *Newell v.*

IV. Statute not to apply to Primary Liability.[1]

V. What Signature sufficient.[2]

FRAUDULENT Conveyance.[3] *See* Bill of Sale; Bankruptcy; Deed; Fraud; Vendor and Purchaser.

FREIGHT. 4 Abr. 55. *See* also Bill of Lading; Charter-Party; and Ship and Shipping.

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II. Relative to the Parties Entitled to, p. 214.

III. Relative to the Parties Liable for, p. 214.

IV. Assignment of Freight, p. 214.

V. Relative to the Construction of Contracts and Right of Lien connected with, p. 214.

VI. Relative to Action connected with, p. 215.

I. Relative to what it is Payable on.[4]

Radford, 3 L. R. C. P. 52; 37 L. J. 1; 17 L. T. 118.

[1] The liability of a party who advertises generally a reward for information to any one not named in the advertisement, who shall first give the information asked for, is a liability at common law, and is not a contract within the Statute of Frauds. *Williams v. Byrnes*, 1 Moore, P. C. C. N. S. 154; 8 L. T. N. S. 69.

[2] *Semble*, that a signature by initials to a contract or memorandum is sufficient within sect. 4. *Chichester v. Cobb*, 14 L. T. N. S. 433, Q. B. In an action for not accepting goods bought through a broker, the sold note, bearing the signature of the broker, who acted for both buyer and seller, is a note or memorandum to satisfy the statute. *Parton v. Crofts*, 16 C. B. N. S. 11; 33 L. J. C. P. 189; 10 L. T. N. S. 34. The subsequent recognition of an unsigned contract in writing for the sale of lands, by the signature of his lawfully authorised agent, to a notice specifying and adopting the contract, is sufficient to bind the party contracting to be charged therewith. *Norris v. Cooke*, 7 Ir. Com. Law Rep. 37,—Exch.

[3] On an interpleader issue, there being strong evidence that the claimant had been privy to a scheme to defeat and defraud the execution creditor, not only after, but before the judgment; and that, in pursuance of this scheme, he had taken a transfer of the property of the debtor, his partner:—*Held*, nevertheless, that though if it were merely meant as a trick and a device by way of pretended transfer, it was invalid; yet, if as between the parties it was intended to take effect, then, whatever its object, it was valid. *Luff v. Horner*, 3 F. & F. 480,—Crompton, J. The object of stat. 3, W. & M. c. 14, was to put devised estates on the same footing, as regards creditors, as descended estates, and unlike the Statute of Elizabeth, against fraudulent conveyances (13 Eliz. c. 5), to render the devised estates liable; it is not necessary to prove that the intent of the devise was to "defraud, hinder, or delay creditors." A covenant to pay a sum certain at a future time, is a debt within the protection of this statute, although a covenant, on breach of which damages may be recovered, as a covenant for title, does not create such a debt; alienation by an equitable devisee for life of land, before action brought by a creditor, is no bar to the rights of a creditor under this statute. *Coope v. Creswell*, 2 L. R. Eq. 106; 35 L. J. 496.

[4] An agent appointed by the managing owner is the agent of all the part owners, and each one is responsible for his acts done within the scope of his duty; therefore, where the agent, insisting upon an excess of freight, the consignee paid it under protest to get delivery of the cargo:—*Held*, that a part owner was liable in an action for return of the excess:—*Held*, also, that where a charter party provided that freight was to be paid at so much per ton, "net weight delivered," the consignee was not bound to pay freight according to the weight mentioned in the margin, or to bear the expense of weighing at ship's side; and custom to the latter effect was negatived. *Coulthurst v. Sweet*, 1 L. R. C. P. 649. A consignee of goods or an indorsee of a bill of lading has no right to have the value of missing goods deducted from the freight payable in respect of the goods delivered. *Mayer v. Dresser*, 16 C. B. N. S. 646; 33 L. J. C. P. 289; 12 W. R. 983; 10 L. T. N. S. 612.

II. Relative to the Parties Entitled to.[1]

III. Relative to the Parties Liable for.[2]

IV. Assignment of Freight.[3]

V. Relative to the Construction of Contracts and Right of Lien connected with.[4]

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[1] The master of a vessel is entitled to recover his freight, if he has either carried his cargo to its destination, or if he has been precluded from carrying it by the act or default of the owner. *Cleary v. M'Andrew*, 2 Moore, P. C. C. N. S. 216. See *Mathews v. Gibbs*, 3 E. & E. 282. It is no answer to an action by a shipowner against the charterer to recover freight, that, by the fault of the master and crew, and their negligent and unskilful navigation of the vessel, the cargo (coal) was damaged so as upon arrival at the port of discharge to be then there of less value than the freight, and that the charterer abandoned it to the shipowner. *Dakin v. Oxley*, 15 C. B. N. S. 646; 10 Jur. N. S. 655.

[2] A ship was chartered from London to San Francisco and Victoria, "the goods to be brought to and taken from alongside at merchant's risk and expense." Freight to be paid, part upon sailing, the residue at port of discharge; and the ship to be consigned to charterers' agents at the port of discharge; and a stevedore recommended by charterers to be employed at ship's expense. At San Francisco the agents incurred expenses in unloading and reloading, partly caused by the manner in which the cargo had been loaded in London. The charterers' agents, in settling the freight with the captain at the port of discharge, put these expenses in the account as due from the shipowners to them, and insisted on their being allowed as against the freight. The captain objected, but yielded under pressure and signed the account:—*Held*, that these were properly ship's expenses, and that the owners were liable for them. *Roberts v. Shaw*, 32 L. J. Q. B. 308; 8 L. T. N. S. 634:—*Held*, also, that this settlement could not be pleaded either as payment or by way of set off in an action against the charterers for that portion of the freight in respect of which the agents had insisted on these expenses being allowed. *Id.*

[3] Action for freight. Plea, set off. Replication, on equitable grounds, that before the freight had become due, and while the plaintiff's ship was at sea earning the freight, he assigned his claim in respect thereof to E. & S., in consideration of a sum of money lent by them to the plaintiff, of which the defendant had notice before the freight had become payable, and that the plaintiff was suing as a trustee for E. and S.:—*Held*, that the replication was bad. *Wilson v. Gabriel*, 4 B. & S. 243; 8 L. T. N. S. 502,—Q. B. H., the registered owner of a ship, mortgages it, and assigns the ship and all policies on the shipmaster which the ship and freight then were or might thereafter be insured, and all past and future charter parties and freight, to defendant; the mortgage was registered. Subsequently H. assigned to plaintiff, to secure an advance, the freight of the ship under a current charter party, and plaintiff gave notice to the charterers; subsequently the ship arrived, and defendant took possession of her as mortgagee, but not until she was partly unloaded:—*Held*, that the plaintiff was entitled to the freight in priority to defendant. *Brown v. Tanner*, 2 L. R. 806; 3 E. & E. 282.

[4] The custom existing in Liverpool of allowing discount upon freights payable on bills of lading of ships from ports in North America, is applicable to freights from ports in California since its annexation to the United States. *Falkner v. Earle*, 3 B. & S. 360; 9 Jur. N. S. 847; 32 L. J. Q. B. 124; 7 L. T. N. S. 672. By the terms of a charter party, freight was to be paid at and after a certain rate on the quantity safely delivered. The cargo to be taken alongside, and to be taken from the ship's tackle at the port of discharge, free of risk and expense to the ship. On the arrival of the ship at the port of discharge, the master required the merchant to pay daily the freight for the amount of cargo delivered each day over the ship's side into the merchant's boats, and refused to deliver more cargo on the merchant refusing to pay on delivery. In an action by the merchant for the non-delivery of a portion of the cargo:—*Held*, that the master was justified in requiring payment daily of the freight delivered. *Black v. Rose*, 10 Jur. N. S. 1009; 11 L. T. N. S. 31,—P. C. A charter party contained the following stipulation as to payment of freight: "Freight to be paid one-third in cash on arrival at B., and two-thirds on right delivery of the cargo of the said ship:"—*Held*, that delivery was not a condition precedent to the right to payment of the two-thirds. That the delivery and payment were concurrent acts, and that to entitle the shipowner to recover the two-thirds it was sufficient to show that he was ready and willing to deliver. *Paynter v. James*, L. R. 2 C. P. 348. A lien for the whole freight is not conferred by incorporating the terms of the charter party, unless they explicitly show that right in order to bind a *bonâ fide* indorsee. *Fry v. The Mercantile Bank of India*, 35 L. J. C. P. 306. See *Mathews v. Gibbs*, 3 E. & E. 282. Although the master of a

VI. Relative to Action connected with.[1]

FRIENDLY SOCIETIES. 4 Abr. 559. The laws relating to these Societies were consolidated by 13 & 14 Vic. c. 115, and amended by various intermediate Acts, and are now governed by 18 & 19 Vic. c. 63; 21 & 22 *id.* c. 101; 23 & 24 *id.* c. 58.

I. Objects for which Society may be Constituted, p. 215.

II. Of the Officers of the Society, Rights, Liabilities, and Duties, p. 216.

III. Settlement of Disputes between Members, and Jurisdiction of Justices and County Court, p. 216.

IV. Incorporation and Dissolution of Societies, p. 217.

V. Stamp Duties, p. 217.

I. Objects for which Society may be Constituted.[2]

ship is a general agent to perform all the things relating to the usual employment of his ship, yet he cannot, by signing bills of lading, freight being thereby made payable to a third party, exclude the shipowner's right to lien on cargo for lump-sum under charter-party, although the charter-party contained the usual clause that bills of lading were to be signed by the owner or his agent, "at any rate of freight without prejudice to this charter." *Reynolds v. Jex*, Q. B. 13 W. R. 968. *See* 17 C. B. 352; 23 L. J. C. P. 265.

[1] S. and F., owners of a ship, mortgaged her to the plaintiff, and also assigned to him all the freight to be earned by the ship. S. and F. retained possession of the ship, and sent her to Cuba, expecting to find there a return cargo; but none was ready. The captain of the vessel, therefore, determined to buy for his owners a return cargo for an English port, and he obtained a cargo of wood from T. and Co., who supplied it to him, and took a bill of lading for the wood from the captain, who, by the bill of lading, bound himself "to deliver it in the like good order in the said port, or in such other my manifest may appoint, to order ——, who, on faithful delivery being shown, shall pay me —— for freight and conveyances." A black line was drawn through the space in the bill of lading usually filled up with the amount of freight. T. and Co. sent to M. and Co., Havannah, the bill of lading and the invoice of the goods, stating them to be "shipped by order of M. and Co., of Havannah, and for account of risk of whom it may concern." M. and Co. paid T. and Co. for the goods, and drew bills for the price on an English merchant, who refused to accept them. The defendant thereupon accepted the bills for the honour of the drawer, and paid them when due. He also received the bills of lading indorsed in blank to T. and Co. S. and F. became bankrupt. The plaintiff took possession of the ship on its arrival in England, and claimed freight for the cargo. The defendant sold the cargo, and paid the freight, under protest to the dock company, with whom the cargo had been deposited. On an interpleader issue whether the plaintiff was entitled to claim freight:—*Held*, that he was so entitled, as the goods remained the property of T. and Co., under the bill of lading. *Gumm v. Tyrie*, 34 L. J. Q. B. 124,—Exch. Cham.

[2] A society of workmen, purporting to be established for the purpose of making allowances to such of its members as may be ill, disabled, or out of employment, but adopting, besides rules for that purpose, rules giving aid to members resisting a reduction of wages below the usual and reasonable prices, and imposing fines on members holding communication with any shop where a dispute has arisen connected with the society or the trade of its members, is not a friendly society established for any of the purposes mentioned in 18 & 19 Vic. c. 63, s. 9, nor for any purpose which is not illegal within the meaning of sect. 44, of the same act; and such a society is, therefore, not entitled to the benefit of the summary powers conferred by sect. 24, for the punishment of members of a friendly society fraudulently withholding money, &c. *Hornby v. Close*, 37 L. J. M. 643; 8 B. & S. 175; 2 Q. B. R. 153. In *Farrar v. Close*, T. T. 1869, on S. P. Q. B. were equally divided. The 13 & 14 Vic. c. 115, s. 2, prohibits assurances in friendly societies beyond 100*l.* The former acts contained no such prohibition:—*Held*, that an assurance for 499*l.*, effected subsequently (1852) in a society established under the former Friendly

II. Of the Officers of the Society, Rights, Liabilities, and Duties.[1]

III. Settlement of Disputes between Members, and Jurisdiction of Justices and County Courts.[2]

Societies' Act, was valid. *Clayton v. Owen*, 31 Beav. 285, 6 L. T. N. S. 802.

[1] Trustees of a provident society formed under 15 & 16 Vic. c. 31, but not registered under 25 & 26 Vic. c. 87, cannot be sued in an action commenced after the passing of the latter act, as the previous act is absolutely repealed by it without any saving clause. *Tontill v. Douglas*, 33 L. J. Q. B. 8 L. T. 924. But a society formed under 15 & 16 Vic. c. 31, and afterwards registered under 25 & 26 Vic. c. 87, may sue in its corporate name upon a bond given to trustees for the society before the passing of the latter act. *Queensbury Industrial Society v. Pickles*, 3 H. & C. 857; 11 Jur. N. S. 877; 35 L. J. Exch. 1; 13 L. T. N. S. 295. But a society, registered under 25 & 26 Vic. c. 87, is not liable to be sued in its corporate capacity in an action not then pending, but commenced after the time of its registration. *Linton v. Blakeney Joint Co-operative Industrial School*, 3 H. & C. 853; 34 L. J. Exch. 211; 13 L. T. N. S. 39. The 18 & 19 Vic. c. 63, s. 23, requires the assignees of the officers of such societies, "upon demand in writing," to pay the debts due from such officers in priority of their other creditors:—*Held*, that a bill filed to recover the amount is a sufficient demand in writing. *Absolom v. Gething*, 32 Beav. 322. The 25 & 26 Vic. c. 87, repeals 15 & 16 Vic. c. 21, and subsequent acts, by which the officers of these societies are required to be sued; but sect. 6 provides, that "all legal proceedings then pending by or against any such trustee or other officer on account of the society, may be prosecuted by or against the society in its registered name, without abatement." Goods were supplied to a society before the passing of this act, and the society was afterwards registered under the act. In an action, commenced in 1863, against the committee of management for the value of the goods:—*Held*, that the action was rightly brought, the act having, by the repeal of former acts, restored the plaintiff's common-law right; and the proviso in the 6th section, including only proceedings then pending, and not claims or rights of action. *Dean v. Mellard*, 15 C. B. N. S. 19; 10 Jur. N. S. 346; 32 L. J. C. P. 282. Officers may change the place of meeting. *Reg. v. Tidd Pratt*, 6 B. & S. 672. The 16 & 17 Vic. c. 107, s. 171, giving summary jurisdiction to justices over officers or members &c., of a friendly society, or the executor, administrator, or assignee of such, having improperly obtained possession of money of the society, or, having possession of it, withholds or misapplies the same, does not apply to the case of an assignee for creditors of the officer, the assignee not being shown to have possession of the specific monies, and not having been personally guilty of any wrongful act with regard to the money. *Ex parte O'Donnell, re Minerva Lodge*, 1 L. R. Q. B. 274; 35 L. J. M. C. 99. Where an officer of a friendly society has received, as such officer, monies belonging to the society, and afterwards executes an assignment for the benefit of his creditors, and his assignees are possessed of enough of his estate and effects to repay the amount of such monies, but the specific monies so received by the officer are not traced to the assignees, the assignees are not liable to the provisions of 18 & 19 Vic. c. 63, s. 24, if they refuse to pay to the society the amount of such monies. *Ex parte O'Donnell*, 14 W. R. 83,—Q. B. Members of an unregistered society enrolled and certified under the Industrial and Provident Societies Act, 15 & 16 Vic. c. 31, giving a promissory note in the following form for a debt of the society, "Twelve months after date, we, the undersigned, being members of the executive committee, on behalf of the L. and S. W. Railway Co-operative Society, do jointly promise to pay," &c., are personally liable. *Gray v. Raper*, 1 L. R. C. P. 694; 14 W. R. 780. The neglect of a friendly society to audit the treasurer's accounts, or to take the required security until some time after his appointment, does not deprive it of the right to priority over other creditors given by 18 & 19 Vic. c. 63, s. 23. *Absolom v. Gething*, 9 Jur. N. S. 1263; 32 L. J. Ch. 786; 8 L. T. N. S. 132,—R.

[2] *See* 18 and 19 Vic. c. 63. s. 40; 21 & 22 id. c. 191, s. 5. *See* 37 L. J. C. P. 50. To deprive the County Court of jurisdiction, it must be shown that the society has no usual place of business within the district. *Shea v. United Sick and Burial Society*, 37 L. J. C. P. 50. Where the rules of a society were deposited with the Registrar after a dispute arose, but before the entry of a plaint, the County Court has no jurisdiction. *Smith v. Pryne*, 7 E. & B. 339, n.; 26 L. J. Q. B. 95.

The provisions, providing for the settlement of disputes between the societies and its members, do not apply to a claim of the society against its treasurer for misappropriating or retaining in his hands monies of the society, and the treasurer is liable to an action. *Sinden v. Banks*, 3 Ell. & Ell. 623. The rules of an industrial society provided, that in case of disputes between a member and the society, or of complaint against an officer, the matter should be settled by arbitration. P., a member, was appointed a salesman of the society, and after he had resigned his appointment disputes arose as to his accounts, which the society proceeded to settle by arbitration; and an award having been made against P., the so-

IV. Incorporation and Dissolution of Societies.[1]
V. Stamp Duties.[2]

FUNERAL EXPENSES.[3]

G.

GAME. 4 Abr. 571.

I. Statutory Enactments as to Offences connected with Game.[4]

ciety proceeded to enforce it, under the 18 & 19 Vic. c. 63, s. 41, by issuing a plaint in the county court, on which P., before the case had been brought before the judge of the county court, applied for a prohibition, on the ground that this was not a matter which could be settled by arbitration:—*Held*, that the application was premature, as the county court was the tribunal to decide, in the first instance, whether, on the facts, the matter was such as could be decided by arbitration. *Skipton Industrial Co-operative Society v. Prince*, 33 L. J. Q. B. 323. Where, under the rules of a friendly society, disputes are to be referred to justices; the justices, hearing and determining any such dispute, are bound, on the application of either party to the proceedings, to state a case for opinion of a superior court. *Reg. v. Lamarde and others, Justices of Kent*, L. R. Q. B. 388. *Semble*, that where a dispute has arisen between a member and the trustees of a friendly society, for the decision of which a specific tribunal is provided by the rules of the society, the jurisdiction of the county court is ousted by 18 & 19 Vic. c. 63, s. 4. *Denton v. Marshall*, 1 H. & C. 654; 7 L. T. N. S. 689. Sect. 24, 18 & 19 Vic. c. 63, does not give the justices power to make an order on an assignee for the benefit of the creditors of an officer of such society, for repayment out of his effects of a sum equal in amount to the balance of the society's monies in the hands of such officer at the time he made the assignment, such balance not consisting of specific monies, and the amount having come into the possession of the assignee solely in his representative character. *The Minerva Lodge v. Gladstone. Ex parte O'Donnell*, 35 L. J. M. C. 99. The 18 & 19 Vic. c. 63, s. 24, giving summary jurisdiction to justices over officers or members, &c., of a friendly society, or the executor, administrator, or assignee of such, having improperly obtained possession of money of a society, or having possession of it, withholds or misapplies the same, does not apply to the case of an assignee for creditors of the officer, the assignee not being shown to have possession of the specific monies, and not having been personally guilty of any wrongful act with regard to the money. *Ex parte O'Donnell, re Minerva Lodge*, 1 L. R. Q. B. 274; 35 L. J. Mag. Cas. 99. Where justices have decided upon a dispute between a friendly society and one of its members, which has been referred to them pursuant to a rule of the society and the 21 & 22 Vic. c. 101, s. 5, the case is within the 21 & 22 Vic. c. 43, s. 2. And the justices are bound to sign a case for the opinion of a superior court on the application of either party. *Watts v. Justices of Kent, Pearch v. the same*. 35 L. J. M. C. 190. A county court within whose district a friendly society has a "usual place of business," has jurisdiction in actions against such society, although the "principal place of business of the society" may not be within the district. *Shea v. United Assurance Society of St. Patrick*. 3 L. R. 3 C. P. 21; 37 L. J. 50; 17 L. T. 176.

[1] A provident society, registered under 15 & 16 Vic. c. 31, is to be wound up in the county court. *Rotherhithe Industrial Society, in re*, 32 Beav. 57; 7 L. T. 305. *Midland Counties Benefit Building Society, in re*, 33 L. J. Chanc. No appeal lies from a county court, in respect of an order made in exercise of its powers in a winding-up proceeding under 25 & 26 Vic. c. 87, s. 17. *Henderson v. Bamber*, 19 C. B. N. S. 540. *Skipton Industrial Co-operative Society (Limited) v. Prince*, 11 Jur. N. S. 11,—Q. B. A friendly and provident society which has ceased to carry on business for many years is an association within the terms of the Companies Act of 1862, and may be wound up under that act. *Alfreton District Friendly and Provident Society*, 7 L. T. N. S. 817. See 10 Jur. N. S. 1089.

[2] Mortgages by strangers to friendly and building societies, to secure loans of surplus funds, are exempted from stamp duty. *Thorn v. Croft*, 3 L. R. Eq. 193; 36 L. J. 68. *See* 10 Geo. 4, c. 56.

[3] The heir-at-law of the deceased not being personal representative, the widow being such, paid the funeral expenses out of his own monies, intending it as a gift, but afterwards changed his mind:—*Held*, he had no claim to be repaid. *Coleby v. Coleby*, 2 L. R. 2 Eq. 803.

[4] In order to convict under sect. 2 of the

II. Dealing in Game.[1]

III. Ownership in.[2]

25 & 26 Vic. c. 114, it is not necessary that the person charged should have been seen on the land where he is said to have obtained unlawful possession of game found upon him; it is sufficient that circumstances be proved from which the magistrates may infer that the offence has been committed. *Brown v. Turner*, 13 C. B. N. S. 485; 9 Jur. N. S. 850; 32 L. J. M. C. 106; 7 L. T. N. S. 681. So, where five men were taken at six a.m. on a Sunday morning on a highway, carrying bags, in which were found one hare and fifteen rabbits, and also several nets and stakes used for the fastening down of the nets, but were not proved to have been on any land in pursuit of game: —*Held*, that this constituted sufficient evidence on which the magistrates might have convicted them of having obtained the game by unlawfully going on land in search of game, or of having used nets and stakes for unlawfully killing and taking game. *Evans v. Botterill*, 8 L. T. N. S. 272,—Q. B.; 33 L. J. M. C. 50. Under 25 & 26 Vic. c. 114, s. 2, for having obtained game by unlawfully being on land in search or pursuit of game, it is not necessary to prove an actual search of the person by the constable if game was seen upon the person. *Hall v. Knox*, 4 B. & S. 515; 33 L. J. M. C. 1; 9 L. T. 380. Upon the trial of an indictment under 9 Geo. 4, c. 60, s. 9, for night poaching, in order to prove that the proceedings were commenced within twelve months after the commission of the offence, a warrant for the party's apprehension issued within the twelve months was produced; but the information on which the warrant was founded was not put in evidence:—*Held*, that, in the absence of the information, the warrant was not legal evidence that the proceedings had been commenced within the time limited. *Reg. v. Parker*, 9 Cox, C. C. 475; 1 L. & C. C. C. 459; 10 Jur. N. S. 596; 33 L. J. M. C. 135; 10 L. T. N. S. 463. A policeman has no power under the 25 & 26 Vic. c. 114, to apprehend persons whom he may suspect of coming from land where they have been unlawfully in pursuit of game, and such persons may lawfully resist and use such violence as is necessary to prevent their apprehension. *Reg. v. Spencer*, 3 F. & F. 854. He can only justify stopping and searching a cart upon a highway under the 25 & 26 Vic. c. 114, where he has good cause to suspect that the cart is carrying game which has been unlawfully obtained; and upon an indictment for assaulting the policeman in the execution of his duty under such circumstances, it is necessary to prove the existence of reasonable grounds of suspicion; where no reasonable grounds of suspicion can be shown, persons are justified in resisting the search. *Reg. v. Spencer*, 3 F. & F. 857. The penalties imposed by 1 & 2 Will. 4, c. 32, s. 33, are cumulative. Section 3 relates to killing, &c., game out of season, and section 23 to killing game without a license, whether in or out of season. *Saunders v. Baldy*, 1 L. R. Q. B. 87; 35 L. J. M. C. 71. The 1 & 2 Wm. 4, c. 32, s. 30, which imposes a penalty for trespass in search or pursuit of game, means in search or pursuit of live game. *Kenyon v. Hart*, 6 B. & S. 249. The killing of game without a game certificate is not an offence against the Game Laws, 4 L. R. Exc. 20; nor can a gamekeeper seize game for want of certificate. 18 L. T. 549.

The 1 & 2 Will. 4, c. 32, s. 23, imposes a penalty on a person who uses an instrument for the purpose of taking game not being authorised so to do for want of a game certificate:—*Held*, that an uncertificated person who set a trap for the purpose of taking partridges or pheasants in the month of March, was liable to be convicted under that section, notwithstanding the 3rd section of the same act. *Saunders v. Baldy*, 35 L. J. Q. B. 71. The penalties imposed by the 23rd section of 1 & 2 Will. 4, c. 32, are cumulative upon those imposed by the 3rd section of that act. *Id.* 1 L. R. Q. B. 87. The penalties under the 1 & 2 Will. 4, c. 32, are cumulative, and an uncertificated person using an engine for taking game out of season is liable to penalties under sect. 23 of the statute, although he might also be liable to penalties under sect. 3. *Id.* 12 Jur. N. S. 334, Q. B.

[1] The 1 & 2 Will. 4, c. 2, s. 11, prohibiting the dealing in game during the period therein expressed, applies as well to live as to dead birds of game; and a dealer in game is liable to the penalty for such dealing. *Loome v. Bailey*, 3 Ell. & Ell. 444.

[2] The owner of land has a property in game killed thereon by a stranger. *Blades v. Higgs*, 13 C. B. N. S. 844; 9 Jur. N. S. 1040; 32 L. J. C. P. 182; 7 L. T. N. S. 798, 834—Ex. Ch.; 11 H. L. 1621. Rabbits started and killed on the land of another are the property of the person upon whose land they are killed. *Id.* Stat. 1 & 2 Will. 4, c. 32, s. 30, which imposes a penalty for trespass in search or pursuit of game, means in search or pursuit of live game. 2. A. standing on his own land, a pheasant rose up on it, and flew to the close of B. A. fired a gun and struck it while over that close, whereupon the bird fell dead, and A. entered and picked it up:—*Held*, that this was not a trespass in search or pursuit of game within stat. 1 & 2 Will. 4, c. 32, s. 30, unless the facts were such as to show that the firing at the bird, the entry on the close of B., and the picking up of the bird, all formed part of one continuous transaction. *Quære*, whether it is a trespass to pass over land in

IV. Rights of Shooting.[1]

V. Trespassing in Pursuit of Game, and Illegal Frightening of Game.[2]

GAMING.[3] 4 Abr. 591. *See* Horse-Racing; Insurance; Interest; Stock-Jobbing; Wager.

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a balloon? *Kenyon v. Hart*, 6 B. & S. 249.

[1] In a demise, the lessor granted to the lessee the right of sporting over the land demised, and certain other lands, "in common with the lessor, his heirs and assigns, and any friend of his or them:"—*Held*, that the exercise of the privilege was not confined to a single friend at a time. *Gardiner v. Colyer*, 10 L. T. N. S. 715—Q. B. But a demise of the exclusive right of sporting over a farm does not justify the lessee in turning out on it game not bred thereon in the ordinary way. *Birkbeck v. Paget*, 31 Beav. 403. And it shows that the lessor is justified in keeping down the excess. *Id.* See 3 F. & F. 683. A person having a right of sporting over land, under an agreement not under seal, part of which has been taken by a railway company, has not such an interest in the land as would entitle him to compensation under 1 & 2 Vic. c. 13, s. 68, as "injuriously affected." And, semble, had he the right by deed it would have made no difference. *Bird v. The Great Eastern Ry. Co.*, 11 Jur. N. S. 782. Where an occupying tenant was summoned for a trespass on his own land in pursuit of game by an alleged lessee of the exclusive right of shooting:—*Held*, the prosecutor was bound to produce the deed under which he had the right to shoot; and not having done so, conviction quashed. *Barker v. Davis*, 34 L. J. N. S. M. C. 140. A reservation in a lease of the right of shooting and sporting over the land demised is not limited to game strictly so called, but reserves to the lessor the exclusive right to follow and shoot such animals as are in common parlance understood to be the subject of sport. *Jeffryes v. Evans*, 19 C. B. N. S. 264; 34 L. J. C. P. 261. Partridges brought up under a common domestic hen may be the subject of larceny. *R. v. Sheckle*, 3 L. J. N. 248. In rating for poor-rate value of shooting should be deducted. 8 B. & S. 12.

[2] Firing at game from a highway is a trespass in pursuit of game within 1 & 2 Will. 4, c. 32. *Mayhew v. Wardley*, 14 C. B. N. S. 550; 8 L. T. N. S. 504. And two persons jointly engaged may be severally convicted of the offence. Where proceedings for trespassing on land in pursuit of game are taken before justices, under 1 & 2 Will. 4, c. 32, s. 30, against a person who raises a question of title, he must allege such title to be in himself, and not in a third person; and it is the province of the justices to determine whether or no such claim has a reasonable foundation. *Cornwell v. Sanders*, 3 B. & S. 206; 9 Jur. N. S. 540. The mere belief of a person however *bonâ fide*, in the existence of the right asserted, is insufficient, unless accompanied by some colour for the claim, to oust the jurisdiction of the justices. *Id.* And see *Leatt v. Vine*, 8 L. T. N. S. 581. Where at the hearing, the defendant gave in evidence a lease, dated 1794, for ninety-nine years of the land upon which the trespass was alleged to have been committed, to a party through whom he claimed, the lessor being the party through whom the informant claimed the right to the game. The lease contained the following reservation to the lessor; "and also liberty to hawk, hunt, set and fowl in and upon the demised premises during the term hereinafter granted:"—*Held*, that the objection being made *bonâ fide*, it was a reasonable one, and that the jurisdiction of the justices was ousted. *Reg. v. Kayly—Kiddle v. Kayly*, 10 L. T. N. S. 339.—Q. B. A person who fires at game which rose on his own land, and seeing it fall on his neighbour's land, enters thereon and picks it up, does not commit a trespass under this section. *Semble*, the search must be for living game. *Kenyon v. Hart*, Q. B.; 12 W. R. 406. A person whose game is enticed away from his land by a neighbour, is liable to an action for exploding combustibles so as to be a nuisance to the latter, in order to frighten the game away from his land and prevent him killing them, and enticing other game. *Ibbotson v. Peat*, 3 H. & C. 644; 11 Jur. N. S. 394; 34 L. J. Ex. 118; 13 W. R. 690; 12 L. T. N. S. 313. An information under 9 Geo. 4, c. 69, s. 1, for entering land for the purpose of taking and destroying game is sufficient to give the justices jurisdiction to hear the charge, although it did not allege that the defendant was on the land for the purpose of destroying game *there*. *Reg. v. Western*, 1 L. R. C. C. R. 122; 37 L. J. M. C. 81; 18 L. T. 299.

[3] An agreement between two persons, each of whom is possessed of a horse, to ride a race, the winner to have both horses, is null and void, being an agreement by way of wagering, within the meaning of 8 & 9 Vic. c. 109, s. 18, and not an agreement to contribute towards a prize to be awarded to the winner of a lawful game, within the meaning of the proviso in that section. *Coombs v. Dibble*, 1 L. R. Ex. 248; 35 L. J. Ex. 167. And where a number of persons assembled together in a public highway to enjoy a diversion called a stag-hunt, which consisted in one of the number representing a stag, and the others chasing him, whereby an obstruction was caused:—*Held*, that this was a game within sect. 72 of the 5 & 6 Will. 4, c. 50. *Pappin v. Maynard*, 9 L. T.

(A) *Betting Houses Illegal*,[1] *and Betting in Streets prohibited.* 31 & 32 Vic. 56.

GARDENS and Ornamental Grounds. The 26 & 27 Vic. c. 13, applies only to where land by stat. or otherwise is vested in trustees or irrevocably set apart for public use. *Tuck v. Metropolitan Board of Works*, 37 L. J. Q. B. 11, 272; 3 L. R. 482.

GAS. 4 Abr. 601. *See* 23 & 24 Vic. c. 125; 24 & 25 id. c. 79.

(A) *Charge for.*[2]

N. S. 327.—Q. B. If the loser of a wager requests a third person to pay the amount of the loss for him to the winner, and he pay it to the winner, an action will lie at his suit against the loser to recover the amount. *Rosewarne v. Billing*, 9 L. T. N. S. 441. And if a person is requested by another to make a wagering contract for him, and in case of loss to pay the amount thereof to the winner for him, and he does accordingly make the payment, he may sue the loser for the amount. *Id.* It is no defence to an action for money lost in France, that it was lent for the purpose of gaming there. *King v. Kemp*, 8 L. T. N. S. 255. But it is a good answer to an action for money had and received that the money was deposited in the hands of defendant to abide the event on which a wager was made, and was claimed by plaintiff as the winner of the wager, and that plaintiff did not repudiate the wager, or demand back his money before the event thereof, and had never repudiated the wager, or claimed the money on any ground than as the winner of the wager, and that no part of the money was a subscription or contribution or due on any agreement to subscribe or contribute for or towards any plate, prize, or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime, or exercise. *Savage v. Madder*, 36 L. J. Ex. 178. Persons tossing up halfpence and betting money on the number of heads and tails, are not guilty of an offence under 5 Geo. 4, c. 83, s. 4, which makes liable to be convicted of being a rogue and vagabond every person playing or betting in any highway, at or with any table or instrument of gaming, at any game or pretended game of chance. *Watson v. Martin*, 10 Cox, C. C. 56; 11 Jur. N. S. 321; 34 L. J. M. C. 50—Q. B. The plaintiff's horse ran in a race, subject to the following conditions:—That he had been fairly hunted with certain hounds during the season; that he had been a certain time in possession of his owner; and the stewards were to disqualify any horse that they did not consider to have been hunted in a genuine and *bonâ fide* manner, and their decision in all cases of dispute will be final. The horse came in first, and his owner claimed the stakes. On an objection that the horse had not been fairly hunted, the stewards at once went into the question, and held that he had, leaving the question whether the plaintiff was the owner within the conditions, for future decision. They subsequently decided that he was such owner, but at the same time disqualified the horse as not having been fairly hunted, because he had not been ridden by his owner. In action for the stakes:—*Held*, that the first decision was inchoate only, and that the stewards could reopen the question, and that the ultimate decision, disqualifying the horse, was by the conditions final. *Smith v. Littledale*, 15 W. R. 61—C. P.

[1] The 5th s. 16 & 17 Vic. c. 119, is governed by s. 4, and money deposited with a betting agent, who frequents a particular spot in a public park, cannot be recovered under s. 5, as the defendant is not the owner or occupier of the house "or other place." In Exch. three judges held that it was not necessary that the defendant should be the owner or occupier of the house, "or other place." *Dogget v. Catterns*, 34 L. J. C. P. 159; 19 C. B. 765. Upon a slip of land adjoining a racecourse, during the races, there was erected a temporary wooden structure, four feet high, without a roof. Over it a board was exhibited upon which were the name of the proprietor and betting lists containing the odds upon and against each horse, which he was willing to bet. The structure had two frontages, and boards used as desks fronting each way. At each desk a man sat with a book for the purpose of recording the bets made with persons outside. Persons betting deposited money and received a card containing the terms of the bet:—*Held*, that this was an "office or place" within the meaning of the Act for the Suppression of Betting-Houses. *Shaw v. Morley*, 37 L. J. M. C. 105; 3 L. R. Ex. 137; 19 L. T. 15.

[2] The effect of the Metropolitan Act of 1860, is not to prevent companies who were not enumerated in it, and who were supplying gas to others than the public at the time of passing of the act, from continuing to do so. *Imperial Gas-light and Coke Company v. West London Junction Gas Company*, 14 W. R. 1019; 15 L. T. N. S. 66—V. C. S. The provisions of the general act, 23 & 24 Vic. c. 125, being inconsistent with those of a private act as to price, the private act is repealed; and the company is entitled to charge 4*s.* 6*d.* per 1000 feet for common gas as authorised by the general act. *Great Central Gas Consumers' Company v. Clarke*, 13 C. B. N. S. 838; 32 L. J. C. P. 41—Ex. Ch.

(B) *Injuries by.*[1]

(C) *Rating works.*[2]

GAVELKIND.[3] 4 Abr. 603.

GAZETTE.[4] 4 Abr. 603.

GIFT.[5] 4 Abr. 604. *See* Donatio Causâ Mortis.

GOODS, Action for not accepting and not Delivering.[6]

GOODS Bargained and Sold.[7] 4 Abr. 605.

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[1] No individual or association can break up the streets for the purposes of laying down gas or water pipes without parliamentary authority. *R. v. Langton's Gas Company*, 29 L. J. M. C. 118. And a court of equity will restrain the parties. *Atty.-Gen. v. Cambridge Gas Company.* 6 L. R. Ch. 282. But see *Sheffield Gas Companies Case*, 22 L. J. Ch. 811. By an improvement act a penalty was imposed upon any gas or other company for fouling water, to be sued for by any common informer. By sect. 21 of the Gasworks' Clauses Act, 10 & 11 Vic. c. 15, a like penalty is imposed for the same offence, recoverable by the person whose water should be fouled. A gas company incorporated by a statute of Vic., which embodied the provisions of the Gasworks' Clauses Act, was sued for fouling a certain stream of water:—*Held*, that the penalties were not cumulative; that the company was not liable to the penalty imposed by the improvement act, and that a common informer could not sue. *Prary v. Croydon Commercial Gas and Coke Company*, 12 W. R. 212—Ex. Ch.

[2] Buildings, &c., of a gas company are to be valued as fixed property, deriving some additional value from their capacity of being used as part of the gasworks. 4 B. & S. 135. *Sheffield Gas Company v. Sheffield (Overseers)*, 9 Jur. N. S. 623; 8 L. T. N. S. 692—Q. B. In assessing gasworks to the poor-rate, deductions are not to be allowed in respect of any machinery or erections absolutely essential to the manufacture of the gas, although they might be removed without actual damage to themselves or to the freehold; such articles having been erected as permanent and essential appendages for the purposes of the manufacture and for the improvement of the inheritance. And the fact that by the course of business in the gas trade a tenant renting gasworks would have to take to the retorts, &c., and pay for them, would not prove that he was entitled to a reduction as to them in assessing the rateable value. The value of the meters alone was allowed to be deducted. *Reg. v. Lee*, 1 L. R. Q. B. 241; 35 L. J. M. C. 105.

[3] In customary descent the ordinary incidents of descents attach to the custom. Therefore, in gavelkind descent, the *jus representationis* applies to the remoter issue as well as to the sons of the intestate's brothers. *Hook v. Hook*, 1 H. & M. 43; 9 Jur. N. S. 42.

[4] If a person adjudicated a bankrupt takes no steps within the prescribed period to annul the adjudication, the London Gazette containing the advertisement of his bankruptcy, is conclusive evidence of the bankruptcy in criminal as well as in civil proceedings taken against him. *Reg. v. Levi*, 1 L. & C. C. C. 597; 10 Cox, C. C. 110.

[5] A. *in extremis* gave all his shares in a particular bank to his son, on condition of his paying a debt which the testator owed upon the shares to the bank, and wrote a letter to the manager of the bank, directing that the shares should be transferred into the name of the son. The certificates of some of the shares were delivered to the manager as a preliminary to the preparation of the necessary deed of transfer. Before the deed was prepared, the testator died:—*Held*, that the transaction was incomplete, and that the shares formed part of his general estate. *Lambert v. Overton*, 11 L. T. N. S. 503. Equity does not interfere between a donor and donee under a voluntary deed; neither will it at the instance of a purchaser for value from the donor order a deed of gift, or an informal instrument of gift, to be given up to be cancelled: the court leaves the parties to their legal remedies. *De Hoghton v. Money*, 1 L. R. Eq. 154. See 37 L. J. Ch. 633; id. 902, 6 L. R. 275. A father placed a cheque in the hands of his infant son, and said, "I give this to him for himself; I am going to put it away for him, and will give him more." He then locked up the cheque, and a few days afterwards died:—*Held*, there was neither a complete gift to, nor a binding declaration of trust in favour of, the infant. *Jones v. Lock*, 11 Jur. N. S. 913. *Roberts v. Roberts*, 13 L. T. N. S. 492; 4 L. R. Eq. 116. *See* 2 B. & A. 551; 4 Ex. R. 478; 5 E. and B. 833.

[6] In every contract to supply goods of a specified description which the buyer has no opportunity to inspect, the goods must not only in fact answer the specific description, but must be saleable and merchantable. *Jones v. Just*, 37 L. J. Q. B. 89.

[7] Commission agents, having a chattel to sell at a fixed price, and their salesman having by mistake agreed to sell it at one-third of that price, and the mistake having

been explained, and the contract repudiated, before the chattel was delivered:—*Held*, that the purchaser could not enforce its delivery. *Isaac v. Boulnois*, 12 W. R. 341.—Q. B. Declaration upon a contract, for the sale and delivery by the plaintiffs to the defendant of as many coals of a certain quality as a steam-vessel, to be sent by the defendant, could fetch in nine months, and breach, that the defendant had neglected and refused to send the steam-vessel for cargoes of the coal, and had refused to accept and receive the same. Plea, that before breach, the plaintiffs broke their contract, by shipping and delivering to the defendant coal not equal in quality to that contracted for, but inferior thereto, and unfit for the defendant's purposes, as the plaintiffs well knew; wherefore the defendant refused to accept any more of the coals:—*Held*, a bad plea. *Jonassohn v. Young*, 10 Jur. N. S. 43.—Q. B. See *Barrowman v. Rossel*, 16 C. B. N. S. 58; 10 Jur. N. S. 679; 10 L. T. N. S. 236. Where there is a contract in writing for the sale and purchase of a certain quantity of goods, and the vendee afterwards agrees to accept a lesser quantity, this is not a new contract requiring to be in writing, but the property passes, and the vendor may sustain an action for goods bargained and sold. *Morgan v. Gath*, Ex.; 34 L. J. N. S. 165. Contract for goods "to be delivered at seller's option in August or September, 1864; payment within ten days of date of invoice." Seller gave notice of delivery for a day in August, and that the invoice would be dated on that day. Seller failed in delivering on the day named. To an action by seller for not accepting:—*Held*, that the failure to deliver in the day named was a good equitable defence. *Gath v. Lees*, Ex. 3 Hurl. & Colt. 558. Sale of specific wools, "to arrive *ex Stige*," to be guaranteed about similar to samples, and if any dispute arises it shall be decided by the selling brokers whose decision shall be final. The wool turned out not to be "about similar to sample;" and in an action against vendee for not accepting, and for recovery of the contract price, less the allowance awarded by the brokers:—*Held*, that the term "about similar to samples" was not a condition but a warranty, and that defendant was not justified in refusing to accept; and that the brokers had power to reduce the prices to be paid. *Heyworth v. Hutchinson*, 2 L. R. Q. B. 447; 36 L. J. 270. If after the sale of a chattel, but before actual delivery, the vendor resells the property while the purchaser is in default, the resale will not authorise the purchaser to consider the contract rescinded, so as to entitle him to recover back any deposit of the price, or to resist paying any balance of it which may be still due. *Page v. Cowasjee Eduljee*, 1 L. R. P. C. 127; 12 Jur. N. S. 361; 14 L. T. N. S. 176. Where the resale is wrongful, the purchaser's remedy is by an action of trover. *Id.* To a count for not accepting goods described in the contract as "to arrive ex-Peerless from Bombay," a plea that the defendant meant another ship of the same name, which sailed from Bombay two months earlier, and that the plaintiff was not ready to deliver any goods which arrived by that ship, is a good answer. *Raffles v. Wichelhaus*, 2 H. & C. 906; 33 L. J. Exch. 160. See *Meyes v. Burrell*, 3 F. & F. 696. The ordinary measure of damages for non-delivery of goods at the stipulated times is the difference between the contract price and the market value of the goods, *at the time the contract is broken*. But if the buyer wait for the goods at the request of the seller, not making any new contract, the damages may be the difference between the contract price and the market value when the buyer goes in to buy. And it was held that, the goods having greatly risen in value, the request of the seller for the buyer to wait was evidence to justify the larger amount of damages. *Ogle v. Earl Vane*, 37 L. J. Exch. 77; 2 L. R. Q. B. 275. *Williams v. Reynolds*, Q. B.; 34 L. J. N. S. 221. Although where the purchaser of a chattel, to be delivered at a future day, does not tell the seller that he requires it for a special and exceptional purpose, he will not be entitled, on non-delivery of the chattel, to have damages assessed as for the special use for which he intended it, yet will he be entitled to damages in respect of the ordinary and obvious use of the chattel, although he had no intention of using it in that manner. *Cory v. The Thames Ironworks and Shipbuilding Company*, 3 L. R. Q. B. 181; 37 L. J. 68; 17 L. T. 495. The property in unfinished goods (bricks) held, as against the assignee in bankruptcy of the vendor, to have passed to the purchaser, who had at the time advanced more than the sale-value to the vendor, by a delivery order on the manager, and his pointing out the specific bricks, which he undertook to hold for the purchaser, subject to a distress of the landlord, who was then in possession. *Young v. Matthews*, 2 L. R. C. P. 127; 36 L. J. 61. *Property* in timber, which had been measured and paid for in bills by the vendee, and numbered and marked with his name:—*Held*, to have passed to the vendee, notwithstanding the contract stipulated that it was to be "delivered to boats," and it was only placed on a wharf; and that on the bankruptcy of the vendee the vendor had no right of stoppage *in transitu* or of lien. *Cooper v. Bill*, C. P.; 34 L. J. N. S. 161. A. contracted to sell to B. 500 bales of cotton at a given price, to arrive at Liverpool per ship or ships from Calcutta. The contract contained provisions as to quality, and for arbitration in case of dispute; and then followed —"The cotton to be taken from the quay; customary allowances of tare and draft, and the invoice to be dated from date of delivery of last bale:"—*Held*, that the clause as to the place of delivery was not a condition precedent, but a mere stipulation in favour of the sellers, and that the contract amounted in effect to a contract to deliver the cotton at a reasonable time, and under reasonable circumstances; the article to be at the buyer's risk and charge from the time of its being

GOODS Sold and Delivered.[1]

GOODWILL.[2] 4 Abr. 607.

GRANT.[3] 4 Abr. 607.

landed on the quay. *Neill v. Whitworth*, 1 L. R. C. P. 684; 12 Jur. N. S. 761; 35 L. J. C. P. 304; 14 L. T. N. S. 670—Ex. Ch.

[1] In the case of goods sold in an open shop or a warehouse, there is an implied warranty on the part of the seller that he is the owner of the goods, and if it turns out otherwise, as, where the goods are claimed by the true owner, from whom they have been stolen, the buyer may recover back the price as money paid upon a consideration which has failed. *Eichholz* or *Eicholtz v. Bannister*, 17 C. B. N. S. 708; 11 Jur. N. S. 15; 34 L. J. C. P. 105; 12 L. T. N. S. 76. In every contract to supply goods of a specified description, which the buyer has no opportunity to inspect, the goods must not only, in fact, answer the specific description, but must also be saleable or merchantable under that description. Both the buyer and seller in this case must be taken to have contemplated a dealing in an article which was merchantable. 3 L. R. Q. B. 197. *Jones v. Just*, 37 L. J. Q. B. 89; 13 L. T. 208. *See* 1 L. R. H. L. 25. On the sale of a specific article for a certain price, a dispute afterwards arising as to the amount, if the parties never were *ad idem* as to the price, by reason of mutual mistake, there would be an implied contract (the article having been retained so long that it could not be returned in the same condition) to pay its real value. *West v. De Wezele*, 4 F. & F. 596. Goods were sold under the following terms, "2½ per cent., or three months' bill," which was explained to mean cash at the expiration of the month succeeding the current month, deducting a discount of 2½ per cent, or at the buyer's option, a bill at three months from the same period; the buyer having refused to accept a bill at the end of the second month:—*Held*, that the seller might at once sue him for goods sold and delivered, and was not bound to wait the additional three months. *Rugg v. Weir*, 16 C. B. N. S. 471. If goods have actually been delivered by a vendor to a purchaser, and the delivery was part of the consideration for payment, a count for goods bargained and sold will not lie, but for goods sold and delivered only. *Forbes v. Smith*, 11 W. R. 574. B. agreed to furnish goods to C., to the amount of 600*l.*, on the terms of half cash, and half by bill at six months; goods to the amount of 88*l.* having been delivered without either cash or bill from C., and an application having been made by him for payment, he replied by letter, that "the demand was opposed to treaty," that he "closed all further orders," and desired that what he had "not purchased might be taken off the premises." In an action for goods sold and delivered:—*Held*, that C.'s letter was a rescission of the contract, and that B. was not bound to bring his action on the special contract, but might sue at once for the goods actually delivered. *Bartholomew v. Markwick*, 15 C. B. N. S. 711; 10 Jur. N. S. 615; 33 L. J. C. P. 145. Contract for the purchase of 500 bales of cotton to arrive per ship or ships . . . "the cotton to be taken from the quay." In an action by purchaser for not delivering according to contract (on the quay):—*Held*, these words did not create a condition precedent to the liability of the purchaser to accept, nor fix a time for delivery, but was a mere stipulation for the benefit of the vendor, and that vendor had not broken the contract by warehousing the cotton. *Neill v. Whitworth*, Ex. Ch. 1 L. R. C. P. 684; 35 L. J. 304. *See Coddrington v. Palaelago*, 36 *id.* Ex. 73. M. ordered certain goods; subsequently M. became insolvent and executed a deed for the benefit of his creditors, under which inspectors were appointed. Afterwards they wrote a letter confirming the order of M., but signed as his agents:—*Held*, that the facts did not make them personally liable to pay for the goods which M. had ordered. *Redpath v. Wigg*, 4 H. & C. 432; 12 Jur. N. S. 903; 35 L. J. Ex. 211; 14 L. T. N. S. 764—Ex. Ch. When goods sold are specified and ascertained, a guarantee that they accord with sample is collateral not a condition enabling the buyer to return the article. *Heyworth v. Hutchinson*, 36 L. J. Q. B. 270. At a sale of bricks the seller received an advance of money, and pointed out to the purchaser's agent the position of those designed for the purchaser. Part only was completed, another part was in course of baking, and the remainder only sunburnt:—*Held*, that the intention of the seller to appropriate to the purchaser the whole of his order was sufficient to pass the property to him, notwithstanding that something remained to be done to the goods by the seller. *Young v. Matthews*, 15 L. T. N. S. 182.—C. P.

[2] By an agreement for the sale of the goodwill of a medical practice, it was stipulated that the purchaser should pay the vendors for and in respect of each of the successive years ending the 31st of December, 1860, 1861, 1862, and 1863, if he should be living at the end of each year, one-fourth part of the earnings and receipts in respect of the practice, without any deduction for expenses, provided the earnings and receipts in each year should amount to 300*l.* In an action upon this agreement:—*Held*, that it was an implied covenant, that the purchaser would not during the four years, by his wilful acts or default, prevent the receipt of earnings; and consequently that the breach was well assigned. *McIntyre v Belcher*, 14 C. B. N. S. 654; 32 L. J. C. P. 254.

[3] There is a class of implied grants by

GUARANTEE. 4 Abr. 614. *See ante*, Frauds, Statute of, p. 210; *post*, Indemnity; Surety.

I. Nature and Form of, p. 224.

II. Consideration for Waiver and Discharge of, p. 224.

III. Operation of the Statute of Frauds on, p. 225.

IV. Continuing Guarantee, p. 225.

I. Nature and Form of.[1]

II. Consideration for Waiver and Discharge.[2]

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devise where there is no necessity for the right claimed, but where the tenement is so constructed as that parts of it involve a necessary dependence, in order to its enjoyment in the state it is in when devised, upon the adjoining tenement. *Pearson v. Spencer*, 3 B. & S. 761—Ex. Ch. A grant by lease of premises last held under the grantor as bleach-works, implies a license to use the same as such. *Hall v. Lund*, 1 H. & C. 676; 9 Jur. N. S. 205; 11 W. R. 271. Where a canal company demised land adjoining the canal to A., and also granted to him the exclusive right to let pleasure-boats for hire upon the canal:—*Held*, that, on the ground that the owner of property cannot attach to it incidents hitherto unknown to the law, the grant of such exclusive right passed no property to A. so as to enable him to maintain an action against a stranger for its infringement. *Hill v. Tupper*, 32 L. J. Exch. 217; 2 H. & C. 121. In 1830, A. obtained from the crown a grant in fee simple of lands in the county of Chester. In 1853, the Birkenhead Docks Commissioners obtained from the Commissioners of Woods and Forests a conveyance of the same lands, upon which, under the sanction of various acts of parliament (to some of which A. was an assenting party), the Dock Commissioners proceeded to construct docks and other public works. In 1855, all the rights and privileges of the Birkenhead Docks Commissioners were, by act of parliament, transferred to and vested in the corporation of Liverpool, and, by subsequent acts of parliament, from the corporation to the Liverpool Dock Commissioners, and ultimately to the Mersey Docks and Harbour Board:—*Held*, that the conveyance of 1853 could not divest the estate which had vested in A. under the grant of 1830; and that the subsequent acts of parliament created no statutable title, either in the Dock Commissioners or in the Mersey Docks and Harbour Board. *Vynor v. Mersey Docks and Harbour Board*, 14 C. B. N. S. 753.

[1] A guarantee for the payment of rent by a tenant from year to year, is discharged by a notice to quit afterwards waived, so far as regards rent becoming due under the new tenancy which arises by the waiver of the notice. *Tayleur v. Wilding*, 3 L. R. Ex. 303; 37 L. J. 173.

A promise in writing, signed, to pay any one unnamed, who shall furnish goods to the writer, or to a third person making default, will become a binding contract with any one, whosoever he may be, who shall accept the promise in writing and furnish the goods. *Williams v. Byrnes*, 1 Moore, P. C. C. N. S. 154; 9 Jur. N. S. 363; 8 L. T. N. S. 69. A. and B. gave a joint and several guarantee to be responsible for the printing account of a company; B. afterwards became the secretary of the company; A. was sued separately on the guarantee, and pleaded equitably, that he gave it on the faith that some other person than B. should be secretary, which the plaintiff well knew, and assented to, and that he had never consented that B. should be secretary:—*Held*, bad. *Burridge v. Child*, 10 Jur. N. S. 106. But it should contain the names of both parties. *Williams v. Lake*, 2 E. & E. 349. A guarantee was as follows:—"I request you will give credit in the usual way of your business to L., and in consideration of your doing so, I hereby engage to guarantee the regular payment of the running balance of his account with you, until I give you notice to the contrary, to the extent of 100*l.*":—*Held*, that the guarantee was not a bare authority, but a contract, and therefore the executor of the guarantor was liable for goods supplied after his death. *Bradbury v. Morgan*, 1 H. & C. 249; 31 L. J. Ex. 462. It is not essential that a memorandum in writing to take the case out of this section should be addressed to the person who is to take advantage of it. *Gibson v. Holland*, 1 L. R. C. P. 1.

[2] The following guarantee was given to a banking firm:—"In consideration that you have at our instance and request consented to open an account with the firm of G. W. and W. J. Hall, shipbuilders, Monkwearmouth Shore, we and each of us do hereby guarantee the payment to you of the monies that at any time may become due, not exceeding five thousand pounds, 5000*l.*, such payment by us not to be made at a shorter date than twelve months from this date." 1. *Held*, that this guarantee did not come

III. Operation of the Statute of Frauds on.[1]

IV. Continuing Guarantee.[2]

within the proviso, 19 & 20 Vic. c. 97, s. 4, as it did not appear either by express stipulation or necessary implication that the guarantee was to continue notwithstanding a change in the persons constituting the firm. 2. *Semble*, that the above enactment did not effect any alteration in the then existing law. *Backhouse v. Hall*, 6 B. & S. 507. Plaintiff having entered into a contract to supply C. & Co. with iron plates on certain terms of payment, delivered part of them, but threatened to keep back the remainder unless he received cash for each delivery, as payments by C. & Co. were not made with regularity. Defendant thereupon agreed that if plaintiff would deliver the remainder of the goods, he would cash for him the acceptances of C. & Co. of bills drawn by plaintiff for the price of such goods, and protect plaintiff from the bills when they became due, defendant receiving a commission of 3*l.* per cent. on their amount:—*Held*, that the agreement was in substance an undertaking by defendant that the seller should not suffer by the default of the buyer of the goods, and must therefore be in writing, according to the 4th section of the Statute of Frauds. *Mallett v. Bateman*, 36 L. J. C. P. 40. A document containing a joint and several guarantee from some directors of a company to that company was delivered to the secretary of the company, and remained in his possession on behalf of the company. Subsequently, upon one of those directors paying to the secretary all that the secretary considered he was liable for, the secretary, under a mistake of law, made a material alteration in the document, by cancelling the signature of the director without his knowledge:—*Held*, that the director was discharged from further liability on the contract, the possession of the secretary being that of the company, distinct from that of the director. *Bank of Hindostan, China, and Japan v. Smith*, 36 L. J. C. P. 241; 16 L. T. 518. A bill given for the amount of a guarantee by the person guaranteed and taken by the plaintiff before the expiration of the time mentioned in the guarantee, but afterwards destroyed in the guarantor's presence, is no waiver of the guarantee. *Collins v. Owen*, 15 L. T. N. S. 327.

[1] A mere promise to indemnify, and not a promise to answer for the debt, default, or miscarriage of another, is not within the 4th section of the 29 Car. 2, c. 3. *Cripps v. Hartnoll*, 10 Jur. N. S. 200; 32 L. J. Q. B. 881; 8 L. T. 765—Ex. Ch. But where the defendant verbally promised the plaintiff, that if he would supply C. with goods, and take his (C.'s) bill at one month, he would discount them at 3*l.* per cent.:—*Held*, in an action for not discounting the bills and indemnifying the plaintiff, that this was a promise to answer for the default of another, and was required by the Statute of Frauds to be in writing. *Mallett v. Bateman*, 16 C. B. N. S. 530; 10 Jur. N. S. 865; 33 L. J. C. P. 243; 10 L. T. N. S. 869. *See Bingham v. Corbett*, 7 L. T. 620. Nor does the act apply to an original promise to pay in consideration of forbearance to the third person. *Reader v. Kingham*, 13 C. B. N. S. 344; 9 Jur. N. S. 797; 32 L. J. C. P. 108; 11 W. R. 366; 7 L. T. N. S. 789. Where A. was in the course of performing a building contract with B., which contract was in writing, and A. being indebted to C. in a particular sum, B. gave C. a guarantee to pay the debt in six months from the date, "providing he has work done as security for the same:"—*Held*, in an action on this guarantee, that C. could not recover without producing in evidence the written contract between A. and B. *Hill v. Nuttall*, 17 C. B. N. S. 262. 33 L. J. C. P. 303.

[2] A. wishing to be allowed from time to time to overdraw his account with his bankers, the plaintiffs, the defendant gave them the following document: "On demand I promise to pay to Messrs. G. & Co. (the plaintiffs) 300*l.*, with interest on same, to secure an advance now or hereafter on a banking account with A." A. became insolvent, and paid, by agreement with his creditors, a composition of 16*s.* in the pound; the plaintiffs, who had advanced much more than 300*l.*, received the dividend on their whole advance, leaving a balance on the whole of more than 300*l.*:—*Held*, that the promise by the defendant was to repay an advance of 300*l.*, and that he was therefore only liable for the balance of 300*l.* after deducting 16*s.* in the pound from that amount. *Gee v. Pack*, 33 L. J. Q. B. 49. Where a limited guarantee has been given, and the limit has been exceeded by the guarantee, who afterwards receives from the estate of the principal debtor a dividend, the guarantor is entitled to the benefit of a proportional part of that dividend on the amount guaranteed, notwithstanding that the unpaid debt greatly exceeds the amount of such guarantee. *Thornton v. M'Kewan*, 1 H. & M. 525. It is a question of intention depending upon surrounding circumstances whether a guarantee is continuous or not. *Wood v. Prudner*, 36 L. J. Ex. 62. *Hill v. Nuttall*, 17 C. B. 262; 33 L. J. 303. *Marten v. Marshall*, 8 L. T. N. S. 462 Ex.; 2 H. & C. 305. A guarantee to secure monies to be advanced to a third party on discount, to a certain extent, "for the space of twelve calendar months," is countermandable within that time. *Offord v. Davis*, 12 C. B. N. S. 748; 9 Jur. N. S. 22. W. and his wife deposited with a banking company the title-deeds of real estate, to which the wife was entitled under her father's will, to secure a running account not exceeding 2000*l.* The father of W. gave the following guarantee to the bank: "I beg to say that the deeds lodged by my son are good for the amount of the

GUERNSEY. As to the office of control *de la reine*. *See* 14 Moore, P.C. 368.

GUNPOWDER.[1] 4 Abr. 616; *see* 23 & 24 Vic. 139; 24 & 25 *id.* c. 130; 25 & 26 *id.* c. 98.

H.

HABEAS CORPUS.[2] 4 Abr. 619.

HACKNEY and STAGE CARRIAGES.[3] 5 Abr. 1. *See* 1 & 2 Wm. 4. c. 22; 1 & 2 Vic. c. 79; 6 & 7 *id.* c. 86; 16 & 17 *id.* c. 33; as to using without license, 29 & 30 *id.* c. 64; penalty on persons suffering from infectious disorders without informing driver, 29 & 30 *id.* c. 90.

HARBOURS, DOCKS, and PIERS. 5 Abr. 16. *See* 10 & 11 Vic. c. 27; 24 & 25 *id.* c. 47; 25 & 26 *id.* cc. 30–69; 26 & 27 *id.* cc. 30–71, 72, 81–86, 106.

I. Tolls and Dues, p. 226.

II. Liabilities Connected with, p. 227.

I. Tolls and Dues.[4]

arrangement with him, otherwise I will guarantee the same." The father subsequently paid a portion of the amount due on the security, and received back his guarantee:—*Held*, that the security was not thereby vacated so as to affect the security. *Waugh v. Wren*, 11 W. R. 244; 7 L. T. N. S. 612—C. Guarantee for a firm by their trade name, which was not their real names; subsequent death of one of the then three partners:—*Held*, the guarantee was not a continuing one. *Backhouse v. Hall*, Q. B.; 34 L. J. N. S. 141; *see* 19 L. T. 305.

[1] Where several packages of gunpowder, amounting in the whole to 300 lbs. weight, were sent by different persons to a warehouse in the metropolis belonging to a carrier and licensed carman, as a temporary halting-place in their transit, until they should afterwards be forwarded by country carriers to their several destinations:—*Held*, not an unlawful having or keeping of gunpowder within 12 Geo. 3, c. 61, s. 11. *Biggs v. Mitchell*, 2 B. & S. 523.

[2] The Isle of Man, though no part of the realm of England, is a dominion, and not a foreign dominion, of the Crown within the 25 & 26 Vic. c. 20, s. 1; and a writ of *habeas corpus ad subjiciendum* will, therefore, run to the island from the English courts. *Brown, In re*, 10 Jur. N. S. 945; 33 L. J. Q. B. 193; 10 L. T. N. S. 458. The 43 Geo. 3, c. 140, s. 1, applies only to judicial inquiries, and does not authorize a habeas corpus for the purpose of bringing a military officer, in prison for debt, before a medical board. *Galwey, In re*, 19 L. T., N. S. 252—Q. B.

[3] A license for hackney carriages, granted by the Commissioner of Stamps, under 2 & 3 Wm. 4, c. 120, does not dispense with the necessity of a license under the Towns Police Clauses Act, 1847, s. 37; the first being required for the purpose of revenue, the second for the purpose of police. *Buckle v. Wrightson*, 11 L. T. N. S. 341,—Q. B.; 5 B. & S. 854; 34 L. J. Q. B. 43. A person holding the license of conductor of a metropolitan stage carriage, under 6 & 7 Vic. c. 86, had been convicted and fined three times by justices, who, however, did not revoke or suspend his license, as they were empowered to do. On his applying for a renewal, in the mode prescribed, the commissioners of the police, under 13 & 14 Vic. c. 7, refused it, on the grounds of the convictions, but said they would grant it after a month:—*Held*, that they were justified in this course. *Ex parte Mitcham*, 5 B. & S. 585; 10 Jur. N. S. 1254; 33 L. J. Q. B. 325. A notice of action is not required when a driver sues the proprietor of a cab for unlawfully defacing his license. *Heath v. Brewer*, 19 C. B. N. S. 803.

[4] A dock company was empowered by statute to charge for the landing of goods in their docks, the several sums mentioned in the schedule annexed, and, for articles not therein particularised, such sums as shall be equal to the sums affixed on goods "of a similar nature, package, value, and quality," in the schedule. All the charges mentioned in the schedule were of small sums, none being *ad valorem* except the charge for sculptured marble and marble slabs. At the end was a note, "Goods not included in the foregoing schedules to be charged in proportion to the rates therein specified, according to size and weight:"—*Held*, that the company was not entitled to make an *ad valorem* charge for the landing of goods not enumerated, or at all approaching, in "nature, value, and quality," to any of those enumerated in the schedule. *Southampton*

II. Liabilities Connected with.[1]

HAWKER and PEDLAR.[2] 5 Abr. 25. *See* 50 Geo. 3, c. 4; 22 & 23 Vic. c. 36; 26 & 27 *id.* c. 22; 27 & 28 *id.* c. 56, s. 7; 29 & 30 *id.* c. 64.

HEALTH, BOARD of. *See* Public Health.

HEARSAY Evidence. *See* Evidence.

HEIR-LOOM.[3]

HIGHWAYS. 4 Abr. 33. *See* 5 & 6 Wm. 4, c. 50; 25 & 26 Vic. c. 61; 27 & 28 id. c. 101.

I. Creation and Dedication of.[5]

II. Surveyors of Highways and Officers.[6]

Dock Company v. Hill, 16 C. B. N. S. 567; 12 W. R. 800; 10 L. T. N. S. 462,—Exch. Cham. See *Tyne Keelmen v. Elliott*, 16 C. B. N. S. 612. *Tyne Keelmen v. Davison*, 16 C. B. N. S. 612. A dock company had power by a special act to detain until payment any goods, on which the owner, consignor, or consignee should not have paid the charges for wharfage, warehouse-room, or rent, allowed by the act; and if the goods should have been removed without payment, to distrain and detain and sell any goods of the owner, consignor, or consignee. By a subsequent act, certain parts of the 10 & 11 Vic. c. 27, were incorporated; by sect. 3 of which owner includes any consignor, consignee, shipper, or agent for sale or custody of goods, as well as the owner thereof; and by sect. 45, power is given to a dock company, in the case of goods having been removed without payment of the rates due upon them, to arrest any other goods within the limits of the company's premises, "belonging to the person liable to pay such rates." The company, having received timber, entered or transferred into the names of C. M. and Co., who were merely agents and not the true owners, refused to deliver it to the real owners until the rates due on other goods entered or transferred into the names of C. M. and Co. in the company's books had been paid:—*Held*, firstly, that assuming the charges to be for wharfage, the company, having dealt under the special and general Acts of Parliament, had not any general lien which might have belonged to them as wharfingers at common law. *Dresser v. Bosanquet*, 9 Jur. N. S. 458; 32 L. J. Q. B. 57. Affirmed on appeal, 32 L. J. Q. B. 374; 4 B. & S. 460:—*Held*, secondly, that neither under the special or general act was the company entitled to detain goods for charges due on other goods, really belonging to different owners, though all entered in the names of the same person. *Id.* See *Mellor v. Jecks*, 19 C. B. 332.

[1] As to expense of raising sunken vessels. See *Wilson v. Carter*, 7 L. T. N. S. 676,—Q. B. Trustees of a dock, being about to open a new one under the authority of Parliament, issued a notice addressed to shipowners, merchants, and others, describing the accommodation which their new dock would afford to shipping, and containing a statement that "the depth of water on the dock sill was twenty-six and twenty-three feet at the highest spring-tides, and fifteen feet at the lowest neaps:"—*Held*, that this amounted to a warranty that there was an available depth of water in the entrance channel approximating that mentioned in the notice; and that the trustees were responsible to the owners of a ship, who, trusting to the representation contained in the notice, entered the dock to load, and were delayed and put to expense in consequence of the insufficiency of water in the channel to enable her to complete her loading in the dock. *Williams v. Swansea Harbour Trustees*, 14 C. B. N. S. 845.

[2] A person going from the town in which he resides and taking a room in another town, though he has the goods sent direct to him, is a trading person within the 50 Geo. 3, c. 41. *Menson v. Hope*, 31. L. J. M. C. 199; 2 B. & S. 498.

[3] Not assets for payment of debts. *Seale v. Haynes*, 9 Jur. N. S. 1338. As to bequests of. See *Hogg v. Jones*, 32 L. J. C. B. 361.

[4] See *Shelford Glen.*—Angell on Highways.

[5] Where an erection or excavation exists upon land, and the land on which it exists, or to which it is contiguous, is dedicated to the public as a highway, the dedication must be taken to be made to the public and accepted by them, subject to the inconvenience or risk arising from the existing state of things. *Fisher v. Prowse. Cooper v. Walker*, 2 B. & S. 770; S. P. *Robbins v. Jones*, 33 L. J. C. P. 1; 15 C. B. N. S. 221; 9 L. T. N. S. 523. The right of the public extends *primâ facie* unless there be evidence to the contrary over the whole space between the boundary hedge or fence. *R. v. Electric Telegraph Company*, 31 L. J. M. C. 106; 2 B. & S. 647. A right of highway does not include a right to race and place hurdles. *Sowerby v. Wadsworth*, 3 F. & F. 734.

[6] A surveyor of highways is not personally responsible for injury arising from non-repair of the highways. *Young v. Davies*, 10 Jur. N. S. 79; 4 H. & C. 197. A highway board duly formed under 25 & 26 Vic. c. 61:—*Held* to be the successor in office of a surveyor of highways, whose term of office had expired before the establishment of the board, and to whom a successor had been appointed, but who had never acted;

III. Highway Board under 5 & 6 Wm. 4, c. 50.[1]

IV. Of the Highway Rate.[2]

V. Repair of Highways.

(A) *Liability of Parish.*[3]

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and that the former surveyor was "an outgoing surveyor," and liable to account to the highway board. *Wrexham Highway Board v. Hardcastle*, 19 C. B. N. S. 177. By 26 & 27 Vic. c. 61, waywardens are prohibited under a penalty of being concerned in contracts for the repairs of roads within their own districts. Where a highway rate was made, payment of which was refused by a person, and application thereupon made for a distress warrant to justices who declined to act until a rule of the court was made absolute, calling upon them to do so: —*Held*, that although no action would lie against the justices, it might well lie against the surveyor who levied the distress. *Freeman v. Read*, 4 B. & S. 174; 10 Jur. N. S. 149; 32 L. J. M. C. 226. The quarter sessions are not bound to appoint on a day after the expiration of the time limited by law for the election of waywardens. *Reg. v. Lindsey (Justices)*, 6 B. & S. 892; 1 L. R. Q. B. 68; 12 Jur. N. S. 314; 35 L. J. M. C. 90. Where, on the hearing of a summons against the district surveyor for the non-repair of a highway, he denies, on behalf of the inhabitants of the parish, the obligation to repair, the justices may direct an indictment to be preferred against the parish. *Reg. v. James*, 3 B. & S. 901.

[1] A parish claimed to be exempted from being included in a highway district, under 25 & 26 Vic. c. 61, s. 5, by reason of its highways being under the superintendence of a board established under 5 & 6 Wm. 4, c. 50, s. 18. The 25 & 26 Vic. c. 61, passed in July 1862, and the highway board under 5 & 6 Wm. 4, c. 50, s. 18, was constituted at a vestry meeting in November 1862, by a majority of two-thirds of the vestrymen present, the chairman having refused to grant a poll which was demanded at the meeting: *Held*, that a poll ought to have been granted, and that the highway board was not properly created. *Reg. v. How*, 9 L. T. N. S. 385; 33 L. J. M. C. 53. A provisional order for forming a highway district under the Highway Act of 1862, constituted the township of E. and certain other parishes and places, a highway district, and directed that one waywarden should be elected for each of the parishes, townships, and places. E. was divided into three hamlets, each of which maintained its own highways. The separate hamlets were not named in the order: —*Held*, that the provisional order and the final order were bad, as the provisional order did not state whether any or what waywardens were to be elected for the three hamlets. *Reg. v. West Riding of Yorkshire (Justices)*, 34 L. J. M. C. 227; 12 L. T. N. S. 580.

[2] The justices, before making an order for contribution out of highway rates towards the repairs of a trust-turnpike road, are bound to see that the trustees of the road have strictly abided by their local act, in the application of the trust-fund towards repairs. *Weardale Highway Board v. Bainbridge*, 1 L. R. Q. B. 396; 35 L. J. M. C. 173. The substitution of the poor-rate for the highway rate by the Highway Act, 1862, as the fund out of which the supplies for maintaining the roads have to come, does not take away the former exemption which had been preserved by the Highway Act, 1835. *R. v. Heath*, 1 L. R. Q. B. 218; 35 L. J. M. C. 113. Part of one parish cannot in law be united to another parish for the purpose of assessment to the repair of highways. *Freeman v. Read*, 4 B. & S. 174. *Reg. v. Dawson*, 13 W. R. 287. A tything, consisting of two farms, had from time immemorial repaired its own highways, and had never contributed to the repairs of highways in other parts of the parish, although rated to the poor-rate: —*Held*, evidence of exemption from the *primâ facie* liability to the repairs of the highways in the parish at large. *Freeman v. Read*, 4 B. & S. 174; 10 Jur. N. S. 149; 32 L. J. M. C. 226. See *Wright v. Frant (Overseers)*, 4 B. & S. 118; 10 Jur. N. S. 39. It is the duty of outgoing surveyors of a parish to collect an outstanding highway rate when, during their term of office, the parish is incorporated into a new highway district under the 25 & 26 Vic. c. 61, and a highway board and district surveyor are appointed. *Reg. v. Bluffield*, 11 L. T. N. S. 337,—Q. B. The words "and then remaining unpaid," in sect. 43, mean remaining unpaid at the end of seven days from the appointment of the district surveyor. *Id.*

[3] By 28 & 29 Vic. c. 96, s. 30, no contract to be made or entered into pursuant to the highway acts for or relating to the making, maintaining, or repairing of highways, shall be chargeable with any higher stamp duty than 6*d*. The common law liability of a parish to repair its highways has not been transferred by the Metropolitan Local Management Act, and therefore no action lies against the vestry for an injury sustained by reason of the non-repairs. *Parsons v. St. Matthew's, Bethnal Green*, 37 L. J. C.P. 62. The justices have no jurisdiction under 5 & 6 Wm. 4, c. 50, s. 95, 25 & 26 Vic. c. 61, s. 19, to direct an indictment to be tried at Assizes, or Quarter Sessions, except where the road

(B) *Liability of Commissioners, &c.*[1]

(C) *Compelling Repairs by order of Justices.*[2]

(*a*) *Indictment or Mandamus.*[3]

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in question is an admitted highway. Their jurisdiction is confined to cases in which the road is admitted to be a highway, and the liability only to repair is disputed. *Reg. v. Farrer, Justices of Dorset*, 1 L. R. Q. B. 558; 35. L J. M. C. 210. A parish cannot be liable by prescription to repair a highway situate in another parish. *Reg. v. Ashby Folville*, 1 L. R. Q. B. 213. An award under an inclosure act in 1816, set out certain public roads and private occupation roads. One of the occupation roads was a soft road, it had no gate at either end, and the public used it without any interference. On two occasions the inhabitants had repaired it by subscription:—*Held*, that there had been sufficient dedication and user to render the parish liable to repair, although they had never adopted the road. *Reg. v. Horley*, 8 L. T. N. S. 382,—Q. B. A row of houses stood a few feet from a raised causeway, the centre of which was a carriage road, the sides being foot pavement. The ground-floor of the houses was on a lower level than the causeway. There was a continuous structure, consisting of flagstones and gratings, from the row of houses to the foot pavement, with which it was on a level; an outer door of each house opened upon this structure; it had been dedicated to the public, and used by them as part of the highway for foot passengers. The carriage and foot roads on the causeway were repaired by the parish. The structure became in a bad state of repair, and, owing to this, R. fell through one of the gratings forming part of it: *Held*, in an action against the lessee of the houses, that the structure was part of the highway, and that the parish was bound to repair it, and that, therefore, the action against the lessee was not maintainable. *Robbins v. Jones*, 33 L. J. C. P. 1; 12 W. R. 248; 9 L. T. N. S. 523. A vestry elected under the Metropolis Local Management Act is not liable to an action for non-repair of a highway (whereby damage occurred to plaintiff), either as standing in the position of the surveyor of highways, or as representing the parish. *Parsons v. St. Matthew's, Bethnal Green*, 3 L. R. C. P. 56; 17 L. T. 211.

[1] Commissioners under the 10 & 11 Vic. c. 34, are liable to an action, in their corporate capacity, at the suit of a person who has suffered damage from a highway, within the limits of their special act, being allowed by them to remain in a dangerous condition. *Hartnall v. Ryde Commissioners*, 10 Jur. N. S. 257; 33 L. J. Q. B. 39.

[2] The justices under 5 & 6 Wm. 4, c. 50, s. 73, have jurisdiction to determine whether a road is a highway or not. *Williams v. Adams*, 31 L. J. Q. B. 101; 2 B. & S. 312; see 3 *id.* 901. Where upon an indictment, the liability of a parish to repair a highway has been negatived by a jury, the justices have no jurisdiction to order a subsequent indictment of the parish. *Ex parte Bartlett*, 3 Ell. & Ell. 253.

[3] Where the liability to repair is disputed, the justices' power to direct an indictment to be preferred under s. 95, 5 & 6 Wm. 4, c. 50. *R. v. James*, 32 L. J. M. C. 85; 3 B. & S. 901. Under s. 95, 5 & 6 Wm. 4, c. 50, an indictment having been directed by justices to be preferred, a bill was found at the spring assizes, and at the following summer assizes the defendants pleaded guilty, having some days before given notice to the prosecutor of their intention to do so:—*Held*, that the judge had power to direct the costs of the prosecution to be be paid out of the highway rate. *Reg. v. Haslemere*, 3 B. & S. 313; 9 Jur. N. S. 73. But when the jury is discharged without a verdict, they being unable to agree, the judge cannot direct the costs to be paid out of the highway rate. *Reg. v. Heytesbury*, 8 L. T. N. S. 315,—Q B. *Reg. v. Cleckheaton*, 11 L. T. N. S. 305. Where an indictment has been preferred under 5 & 6 Wm. 4, c. 50, s. 95 and has been removed by *certiorari*, the judge has no power, under that section, to direct that the costs of the prosecution shall be paid out of the rate. The costs in such a case are provided for by 5 Wm. & Mary, c. 11. *The Queen v. Eardisland*, dissented from. *R. v. Inhabitants of Ipstanes*, 37 L. J. M. C.; 3 L. R. Q. B. 216. Where on an indictment for non-repair of a highway the defendants plead guilty, there is no power in the court before whom it is preferred to award costs, under the 5 & 6 Wm. 4, c. 50, s. 98, which makes it lawful to award costs, if it shall appear to the court that the defence was frivolous and vexatious. *Reg. v. Denton*, 34 L. J. M. C. 13; 13 W. R. 143; 11 L. T. N. S. 371,—Q. B. To an indictment for non-repair of a highway in parish A., it was pleaded that the parish of G. was bound from time immemorial to repair such highway, in consideration of levying and receiving rates in respect of certain lands of parish A., adjoining to such highway. Replication, that the agreement referred to in the plea was put an end to by notice:—*Held*, the replication was a good answer to the plea. *Reg. v. Ashby Folville*, 1 L. R. Q. B. 213; 12 Jur. N. S. 520; 35 L. J. M. C. 154. *Semble*, there is no sufficient authority for holding that one parish can be liable by prescription to repair a highway in another parish. But, at all events, there must be shown to have been a sufficient consideration, which existed contemporaneously with such liability. *Id.*

VI. Nuisances on Highways, and Indictments Relating thereto, and other Legal Proceedings.[1]

VII. Widening, Stopping, and Diverting Highways.[2]

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[1] Making a fire within fifty feet of the centre of a public carriage way is not an offence within the 72nd section of the General Highway Act, 5 & 6 Wm. 4, c. 50, unless it be done to the injury of the highway, or to the injury, interruption, or personal danger of persons travelling thereon. *Stinson v. Browning*, 35 L. J. M. C.; 1 L. R. C. P. 321. And it is an indictable nuisance to obstruct or to employ others to obstruct a public highway or footway, by placing earth and bricks thereon, taking up the pavement and opening trenches for the purpose of laying down service pipes for the supply of gas from public mains to private houses, unless those who do or authorise such acts have parliamentary powers for the purpose. *Reg. v. Longton Gas Company*, 2 El. & El. 651. It seems beasts or cattle may be "wandering, straying, or lying about a road," within Geo. 4, c. 95, s. 75, and liable to be taken up and impounded, although there may be a keeper with them. It is a question of fact whether they were under the control of the keeper. *Morris v. Jeffries*, 1 L. R. Q. B. 261; 35 L. J. M. C. 143; 13 L. T. 629. A parish vestry claiming a public right of way has no right to file a bill for the purpose of having an obstruction removed; they should proceed by information. *Vestry of Bermondsey v. Brown*, 1 L. R. Eq. 204. The 2 & 3 Vic. c. 47, s. 54, imposes a penalty on all persons who, to the annoyance of passengers, shall turn loose any horse or cattle in a thoroughfare: —*Held*, that the expression "turned loose," means leaving the cattle without any control. *Sherborn v. Wells*, 32 L. J. M. C. 179; 8 L. T. N. S. 274,—Q. B. Where, therefore, a person sent his cattle without any halter, but under the care of a boy, to graze on a highway:—*Held*, that this was not an offence within the act. *Lawrence v. King*, L. R. Q. B. 345; 37 L. J. M. C. 78; 18 3 L. T. 335. The right for the inhabitants of a township to take stones from the land of another person for the purpose of repairing the highways, is a *profit à prendre*, and cannot therefore be claimed by custom; neither can it be claimed by prescription, as inhabitants are incapable by that description of taking such an easement, unless under a grant which would incorporate them. *Constable v. Nicholson*, 14 C. B. N. S. 230; 32 L. J. C. P. 240; 11 W. R. 698. A person was engaged in blasting a stone quarry, and, by using an excessive charge of powder, caused a great quantity of stones to fall upon a public highway, and upon houses adjacent to the quarry and highway: —*Held*, that he was rightly convicted upon an indictment which charged him with a nuisance to the highway. *Reg. v. Mutters*, 1 L. & C. C. C. 491; 10 Cox, C. C. 6; 11 Jur. N. S. 144; 34 L. J. M. C. 22. The mere fact that a piece of ground, part of a public highway, has for twenty years been used by an innkeeper for the standing of the vehicles belonging to his guests, is no answer to a complaint for the obstruction under the 5 & 6 Wm. 4, c. 50, s. 72. *Gerring v. Barfield*, 16 C. B. N. S. 597; 11 L. T. N. S. 270. A person without the authority of Parliament, but with the concurrence of and by virtue of a contract with the vestry of the parish, laid down in one of the streets of the metropolis a double line of tramways on which omnibuses of a peculiar construction plied for hire. These tramways were dangerous and inconvenient to many of the public, as the wheels of vehicles skidded when crossing the tramway, and horses which put their feet upon it were startled: —*Held*, that this was a public nuisance, even though those tramways might be for the conveyance of the public generally. *Reg. v. Train*, 2 B. & S. 640. *Smith v. Stokes*, 32 L. J. M. C. 199; 11 W. R. 753; 8 L. T. N. S. 425. The 5 & 6 Wm. 4, c. 50, s. 72, imposing a penalty upon any person riding or driving upon a footpath, only applies to footpaths by the side of a road. *Reg. v. Pratt*, 3 L. R. Q. B. 64; 37 L. J. M. C. 23; 16 W. R. 146. A person who had encroached on and obstructed a public highway in a township, was indicted for so doing by the highway board of the district wherein the township was situated, and convicted. In addition to the taxed costs, the expense of the prosecution was 60*l.*, which the highway board required the township to pay: —*Held*, that the township was liable for the payment of that sum, it being an expense in relation to a highway, within the township, within 25 & 26 Vic. c. 61, s. 20. *Heath v. West Eddisbury Highway Board*, 13 W. R. 805. S. C., nom. *Reg. v. Heath*, 12 L. T. N. S. 492,—Q. B.

[2] Where an old road is proposed to be stopped up, not as "unnecessary," but on account of the new one being more commodious, the certificate is sufficient in stating that the old way will be unnecessary, when the new proposed highway is completed. *Reg. v. Phillips*, 1 L. R. Q. B. 648; 35 L. J. M. C. 217; 12 Jur. N. S. 920; 1 L. R. Q. B. 640. Where a valuer appointed under the act gives notice that a road from A. to B. is to be stopped up from and after a particular day, and a person gives notice of appeal against stopping up a specified part of that road, the notice is good, and he is entitled to have his appeal heard. But *quære*, what effect the appeal would have against stopping up the whole road. *Reg. v. Justices of Huntingdonshire*, 1 L. R. Q. B. 36. Overruling *Reg. v. Shiles*, 1 Q. B. 919. The 8 & 9 Vic. c. 118, s. 63, does not require

HIRING.[1] *See also* Bailment.

HOMICIDE. *See post*, Murder.

HOP-Trade. *See* 29 & 30 Vic. c. 37, amending 54 Geo. 3, c. 123.

HORSES. 5 Abr. 50. Duties and Licenses, 16 & 17 Vic. c. 88. *See* Gaming; Innkeeper; Warranty (Oliphant's "Law of Horses.")

I. Horse-Racing, p. 231.

II. Hire of. *See* Bailment.

III. Warranty on Sale of, p. 232.

(A) *Who may warrant.*

(B) *Construction of.*

(C) *Action on Warranty, and Damage for Breach. See Warranty.*

I. Horse-Racing.[2] 3 & 4 Vic. c. 5.

that an appeal under that section shall be actually heard within the four months mentioned in that section, but the due notice of appeal shall be given within that time. *Reg. v. Essex (Justices)*, 13 W. R. 186; 11 L. T. N. S. 486. Under sects. 84 & 89 of 5 & 6 Wm. 4, c. 50, justices can only certify the diversion of a highway with reference to the existing state of circumstances. *Reg. v. Local Board of Midgley*, 5 R. & S. 621; see 10 Jur. N. S. 1125; 33 L. J. M. C. 188; 12 W. R. 951,—Q. B. *Wright v. Frant*, 32 L. J. M. C. 204; 11 W. R. 883; 8 L. T. N. S. 455,—Q. B. As by sect. 90, 5 & 6 Wm. 4, c. 50, the court is required to give costs, whether the appeal is heard or not, they were bound to enter continuances, and make such order. *Reg. v. W. R. Yorkshire (Justices)*, 2 B. & S. 811; 9 Jur. N. S. 118.

[1] A person letting out a carriage to hire for a specific purpose, by so doing warrants that it shall be reasonably fit for that purpose; and (if negligence is necessary to be proved) it is negligence in any one to let out to hire a carriage to convey either persons or merchandise, without previously taking care to ascertain that it is reasonably safe. *Jones v. Page*, 15 L. T. N. S. 619.—Exch. A coachbuilder let a brougham for a year, and, according to the custom of the trade, the hirer's arms were painted on the panels. The hirer put the brougham up for sale by auction at Aldridge's, and it was purchased by a commission agent and horsedealer:—*Held*, in an action of trover by the owner against the purchaser of the brougham, that by allowing the arms to be painted on the panels, the owner did not render himself responsible for the fraudulent sale by the hirer, and therefore the purchaser must be the loser in the transaction. *Marner v. Banks*, 17 L. T. N. S. 147; 16 W. R. 62.—C. P.

[2] Plaintiff and defendant agreed to ride a race, each on his own horse, the winner to have both horses, defendant won the race and took possession of plaintiff's horse. In an action of detinue:—*Held*, that the case did not come within the proviso in 3 & 4 Vic. c. 5, as a "subscription or contribution" to a prize, &c. but that the agreement was void under the first part of the section as "gaming or wagering." *Quære*, whether a contribution to a sweepstake is within the proviso, and therefore legal. *Coombes v. Dibble*, 1 L. R. Ex. 248; 35 L. J. 167. *Batty v. Marriot*, 5 C. B. 818; 17 L. J. C. P. 215; 16 & 17 Vic. c. 119; 3 & 4 Vic. c. 5. Betting houses abolished by 16 & 17 Vic. c. 119. See rules of Jockey Club, Oliphant on Horses, Append. A custom for the freemen or citizens of Carlisle to enter on Ascension Day upon certain land in an extra-parochial hamlet, near to the city of Carlisle, for the purpose of horse-racing, is a good custom. *Mounsey v. Ismay*, 9 Jur. N. S. 306; 32 L. J. Exch. 94; 11 W. R. 270; 7 L. T. N. S. 717. To a declaration for breaking and entering into land of the plaintiff, the defendant pleaded that there was a common and public highway over and along the land for all persons to go and return at such times of the year as horse-races were holden on the land at their free will and pleasure for the purpose of witnessing the races, and that the trespasses were a use by the defendant of the highway for these purposes. Other pleas alleged a common right for all persons to go and remain for a reasonable time for the

III. Warranty on Sale of.

(A) *Authority to Warrant.*[1]

(B) *Construction of.*[2]

HOSPITAL.[3]

HOUSEBREAKING.[4] *See* also Arson; Burglary.

HUMAN Food. *See* Warranty. Emmerton *v.* Matthews, 31 L. J., Ex. 39; 7 H. & N. 586.

HUSBAND and Wife. 5 Abr. 59. *See post*, Marriage; Parent and Child.

I. Of the Persons between whom the Relative Situation of Husband and Wife may or may not be Created. *See post*, Marriage.

II. Of Promises of Marry. *See post*, Marriage.

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purpose of witnessing the horse-races:—*Held*, that the pleas were bad. *Coventry (Earl) v. Willes*, 9 L. T. N. S. 384—Q. B. *See Wood v. Leadbetter*, 13 M. & W. 840, as to licenses to enter course and power of revocation. To bring a custom within the prescription act, it must be a right of utility and benefit, and not one of recreation and amusement. *Mounsey v. Ismay*, Ex. 11 Jur. N. S. 141.

[1] A person employed by a horse-dealer to sell a horse has an implied authority to warrant a horse sound, which cannot be negatived; in the absence of knowledge by the buyer that he had no such authority, or by a usage that where a certificate is obtained from a veterinary surgeon, dealers do not warrant. *Howard v. Shewnd*, 2 L. R. C. P. 148; 36 L. J. C. P. 42. But the servant of an owner sent a dealer entrusted on one occasion to sell and deliver a horse, is not by law authorised to bind his master by a warranty. The buyer taking it at the risk of being able to prove that he had his principal's authority. *Brady v. Todd*, 30 L. J. C. P. 223. See 9 C. B. 592, and *Jenn v. Harrison*, 3 T. N. 760. If the seller repudiates the warranty made by his agent there is no sale. *Brady v. Todd, supra.* Statements made by the servant after the sale are not admissible against the master. *Wooden v. Barford*, 26 L. M. 291. But in an action for the breach of a warranty on the sale of a horse by the servant of a private owner at a fair:—*Held*, that a letter from the plaintiff's attorney to the defendant, referring to the alleged warranty, and averring a breach of it, and an answer from the defendant, simply denying that there had been any breach of warranty, afforded evidence whence the jury were justified in finding that the servant had authority, in fact, to warrant. *Miller v. Lawton*, 15 C. B. N. S. 834.

[2] A warranty in writing, on the sale of a horse, in these words, "Warranted sound for one month:"—*Held*, to mean warranted sound at the time of sale, provided that the defect be ascertained and complaint made within a month from the sale. The court considering that the words should be construed, not in the abstract, but with reference to horse transactions, as to which a custom had prevailed of limiting the time for taking the objection of unsoundness. *Chapman v. Gwyther*, 6 B. & S. 417; 2 L. R. Q. B. 463; 35 L. J. 142; 14 L. T. 477. A horse having been sold with a general written warranty, the seller at the time pointing out that he had splints:—*Held*, answerable notwithstanding, for lameness which arose from them. *Smith v. Bryant*, or *O'Bryan*, 10 Jur. N. S. 1107; 13 W. R. 79; 11 L. T. N. S. 346. A defendant who had a horse for sale at a commission stable, meeting the plaintiff at Tattersall's, and being informed by him that he had been looking at the horse, said, "He is a good harness horse; he belonged to Baron R., who sold him because he could not match him." The plaintiff went again to the stable, and after having had the horse put into a break, agreed to purchase him for 65*l.* There was no suggestion that the defendant had intentionally misrepresented the horse; but he turned out to be a kicker. The jury having found that the representation made at Tattersall's was part of the contract, and amounted to a warranty that the horse was quiet in harness, the court refused to disturb the verdict. *Percival v. Oldacre*, 18 C. B. N. S. 338.

[3] The proviso in 38 Geo. 3, c. 5, s. 25, exempting hospitals from land tax, applies only to hospitals and sites of hospitals founded before the passing of the 38 Geo. 3, c. 60, the act by which the former act was made perpetual. *Colchester v. Kewney*, 36 L. J. Exch. 172; 2 L. R. Exch. 253; 16 L. T. N. S. 463.

[4] To support a conviction under 24 & 25 Vic. c. 95, s. 58, it is necessary that the persons should be proved to have the intent of breaking into or entering some particular building, not a mere general design to break into houses. *R. v. Jarnald*, 32 L. J. M. C. 258.

III. Of the Mode in which the Relative Situation of Husband and Wife may be Created. *See post*, Marriage.

IV. Of the Effect of the Relative Situation of Husband and Wife being Created, p. 233.

(A) *Of the Interest and Power acquired by the Husband by Marriage, id.*

(*a*) *In the Property of his Wife, id.*

(*b*) *Rights of Husband to, and Power over, his Wife's Choses in Action*, p. 234.

(B) *Of the Liabilities to which the Husband is rendered subject by the Marriage, id.*

(C) *Of her Power over her Own or Separate Property, and Liability in respect thereof*, p. 235.

(D) *Deeds of Separation between Husband and Wife*, p. 236.

(E) *Actions by Husband and Wife*, p. 237.

(F) *Actions against Husband and Wife, id.*

IV. Of the Effect of the relative Situation of Husband and Wife being Created.

(A) *Of the Interest and Power acquired by the Husband by Marriage.*

(*a*) *In the Property of his Wife, and Power over how exercised.*[1]

[1] See 3 & 4 Wm. 4, c. 74, abolishing fines and recoveries, amended by 17 & 18 Vic. c. 75; 20 & 21 *id.* c. 57. With respect to acknowledgments of deeds by married women taken in any colony or foreign possession, affidavits verifying the same made before any court or judge, magistrate, or other person authorised to administer an oath, and containing in the jurat a statement by such court or judge, or other person, of the name or title of his office, shall be received as sufficient compliance with the 3 & 4 Wm. 4, c. 74, s. 85, Reg. Gen. C. P. 13 C. B. N. S. 406. Where the acknowledgment of a married woman is taken out of the jurisdiction, the affidavit verifying the acknowledgment must be taken before a person authorised to administer an oath; but it is not essential that such person should be a magistrate. *Re Way*, 7 Scott's N. R. 999, *ex parte Hutchinson*, 5 C. B. 499; see *re Cooper*, C. P. 11 Jur. N. S. 114; 18 C. B. N. S. 220; 34 L. J. C. P. 145; 13 W. R. 292. *Hall, ex parte*, 19 C. B. N. S. 369. The 3 & 4 Wm. 4, c. 74, s. 91, gives no authority to the court to grant an order dispensing with the concurrence of a husband in the sale or conveyance of the wife's land, unless the land is actually contracted to be sold or conveyed. *Graham, ex parte*, 19 C. B. N. S. 370; 11 Jur. N. S. 468; 34 L. J. C. P. 321; 13 W. R. 782. As to conveyance of separate property by a married woman, when living apart, by a sentence of judicial separation without alimony. *See Andrews, ex parte*, 19 C. B. N. S. 371. A certificate of acknowledgment under 3 & 4 Wm. 4, c. 74, s. 84, may be filed after a month of delay satisfactorily accounted for. *In re Edge*, 35 L. J. C. P. 263; 1 L. R. 533. But before a commissioner takes the acknowledgment of a married woman who is to receive a sum of money for her interest in the property, he should explain to her that payment to her is payment to her husband, and should ascertain whether she desires to give up the property without any provision being made for her. (In this case the examination was unnecessary, as the property was settled to her separate use.) *In re Dorning*, C. P. 34 L. J. N. S. 173. The court will not permit a married woman to execute a conveyance under 3 & 4 Wm. 4, c. 74, s. 91, without the concurrence of her husband (he having refused to concur), upon an affidavit merely stating that the wife had left her husband in consequence of his violence, and was living apart from him. *Price, in re*, 13 C. B. N. S. 286; 7 L. T. N. S. 327. Nor rescind any order under 20 & 21 Vic. c. 57, touching the disposition of personalty by wife without concur-

(*b*) *Rights of Husband in, and Power over, his Wife's Choses in Action.*[1]

(B) *Of the Liabilities to which the Husband is rendered subject by the Marriage.*[2]

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rence of husband, he having no interest therein, although according to arrangement, they once a week came together and visited one another. *In re, Roger*, 35 L. J. C. P. 171. Where the certificate of the taking of an acknowledgment by a married woman is lost, the court cannot direct the judge to give a fresh certificate. 36 L. J. C. P. 233; 1 L. R. C. P. 570. The executors of a widow brought covenant upon a lease executed by her and her late husband (who was seised in her right), but not acknowledged by her according to 3 & 4 Wm. 4, c. 74, ss. 77, 79, and not made according to the power in 19 & 20 Vic. c. 120, s. 32. The defendants had executed the lease as sureties for the lessee, who was left in possession for the whole term, before and after the death of the husband, the widow doing nothing to disaffirm the tenancy:—*Held*, that the defendants were liable, as it must be presumed that the lessee obtained what he bargained for, a lease, valid while the husband and wife lived, and voidable upon his death. *Toler v. Slater*, 37 L. J. Q. B.; 3 L. R. Q. B. 42.

[1] A fund in court belonging to a married woman residing with her husband at the Cape, was, whilst he was temporarily in this country, assigned by him by way of mortgage. Afterwards the husband and wife were divorced by the proper tribunal at the Cape. The fund was never reduced into possession by the husband during the coverture. On a petition by the wife as *feme sole*:—*Held*, that she was absolutely entitled to the fund. *Heath v. Lewis—Johnson, ex parte*, 10 Jur. N. S. 1093; 11 L. T. N. S. 333. If, during a marriage, the wife acquires a right to a distributive share in an intestate's estate, and dies without asserting her claim, leaving the husband surviving, who dies without asserting his claim, it is necessary for the next of kin of the husband, in order to enforce the right of the wife, and to reduce it into possession for their benefit, to take out letters of administration both to the wife and the husband, and to pay stamp duty for each grant. *Attorney-General v. Partington*, 33 L. J. Exch. 281; 13 W. R. 54; 10 L. T. N. S. 751.

[2] Where a wife is living with her husband, the presumption is, that she has his authority to bind him by her contract for articles suitable to that station which he permits her to assume; but that presumption may be rebutted by showing that she had not such authority. *Reid v. Teakle*, 13 C. B. 628. *Jolly v. Rees*, 15 C. B. N. S. 628. A. forbade his wife to pledge his credit with tradesmen, and told her that he would supply her with money for necessaries; but the money was not regularly paid, and necessaries were not sufficiently supplied. Goods were, nevertheless, delivered by them to the wife, at her request, suitable to the estate and degree of A., but the tradesmen had no notice of A.'s injunction to his wife, and A. was not aware that the goods had been supplied:—*Held*, (Byles, J. dissentiente) that the wife had no authority to bind her husband for necessaries, against his will and contrary to his order, although without notice of such order to the tradesmen. *Id. Ruddock v. Marsh*, 1 H. & N. 601. *Jewsbury v. Newbold*, 26 L. J. Ex. 247. The authority of a wife to bind her husband for necessaries supplied to her when turned out of her house, is a presumption of law, and not to be rebutted. *Harrison v. Grady*, 12 Jur. N. S. 140.—C. P. *Etherington v. Parrot*, 2 L. Raym. 1006. The inference of non-agency may be adopted when the circumstances under which the debt was contracted are such as the assent of the husband to the contract cannot be presumed. *Montague v. Benedict*, 3 B. & C. 631. *Seaton v. Same*, 5 Bingh. 28. In an action against a husband for goods supplied to the wife, it may be left to the jury whether the goods were *necessaries*, whether she had a sufficient supply of them at the time the goods were ordered, whether the wife had a sufficient separate allowance suitable to her condition, and whether there was what amounted to an express prohibition by the husband to pledge his credit. *Morgan v. Chetwynd*, 4 Fost. & Fin. N. P. Cas. 451. It is an answer to an action against a husband for the value of necessaries supplied to his wife, that in a suit in the Divorce Court against the wife for dissolution, prior to the cause of action, the jury found by their verdict the adultery of the wife, the court not pronouncing for dissolution, on the ground that the husband had committed adultery, and that the evidence as to the divorce suit was admissible under the general issue of never indebted. *Needham v. Bremner*, 1 L. R. C. P. 583; 35 L. J. 313. *See Harrison v. Grady, supra.* But after a divorce *à vinculo*, he is not liable for torts committed by the woman during coverture. *Cessel v. Powell*, 13 W. R. 159. In an action against a husband for goods sold to the wife *dum sola*, it is not competent to the judge at nisi prius to amend the record by making the female a co-defendant. *Garrard v. Guibilei*, 13 C. B. N. S. 832.—Ex. Ch. A husband has a right to limit the expenditure of his wife; and, if it is made out to the satisfaction of the jury that he has actually done so, he will not be liable for the debts contracted by her in opposition to his directions. *Shoolbred v. Baker*, 16 L. T. N. S. 359. Mere dissatisfaction expressed on the part of the husband at the extent of the wife's expenditure is not sufficient. *Id.* Where a married woman having separate

(C) *Of Wife's Power over her Own or Separate Property, and Liability in respect thereof, and Protection orders.*[1]

property was living with her daughters away from her husband without his consent, but occasionally seeing him, it was left to the jury to determine whether a rupture had taken place between the husband and wife of such a kind as to deprive her of her authority to pledge his credit for necessaries supplied to herself and her daughters. *Crocker v. Napper*, 16 L. T. N. S. 295. *Morgan v. Chetwynd*, 4 F. & F. 451. Where the parent, or person in *loco parentis*, of a lady engaged to be married retains a solicitor to prepare a money settlement by the intended husband, under which provision is made for the lady, and the settlement is executed, and the marriage takes place, the husband is liable for the payment of the costs of settlement; and the fact of the lady being an infant does not vary the case, as the settlement may justly be considered a necessary suitable to her estate and condition. *Helps v. Clayton and Wife*, C. P. 34 L. J. N. S. 1. Where a husband by his cruelty compels his wife to live apart from him, he is liable upon contracts made by her for necessaries, notwithstanding she, in fact, receives from him an allowance which is found by the jury to be insufficient, regard being had to his means and position in life. *Baker v. Sampson*, 14 C. B. N. S. 383. The costs of a solicitor employed by a married woman to institute proceedings on her behalf against her husband to obtain a decree of judicial separation, are not necessaries for which the husband is liable, unless there was at least great probability of ultimate success. *Hooper, in re, Baylis v. Watkins*, 10 Jur. N. S. 114; 33 L. J. Chanc. 300; 9 L. T. N. S. 741.—L. J. A husband having deserted his wife without cause, and left her without means of subsistence, she by advice of an attorney instituted a suit for restitution of conjugal rights, and obtained a decree for alimony *pendente lite*. She also, by the advice of the same attorney, took the opinion of counsel whether a verbal promise of a settlement made by the husband at the time of the marriage could be enforced in equity. She further consulted her attorney as to the best means of dealing with tradesmen who had supplied her with necessaries and were pressing her for money, and also with the landlord of a house in which she and her husband had lived, who was threatening to distrain for rent upon furniture in the house, which had been hers before marriage, but had become her husband's on marriage:—*Held*, that all these steps taken by the wife were reasonably necessary under the circumstances, and that she had an implied authority to pledge her husband's credit in respect thereof, and that on the death of her husband her attorney was entitled to recover his costs from the husband's executors, including the costs for expenses preliminary to the suit. *Wilson v. Ford*, 37 J. L. Ex. 60. A husband is liable in damages to a servant who has sustained an injury by riding in a defective cart by the directions of his wife. *Miell v. English*, 15 L. T. N. S. 249. He is responsible for necessaries supplied to child in custody of its mother under 2 & 3 Vic. c. 54. *Bazeley v. Forder*, 37 L. J.; 2 B. 287; and for funeral expenses suitable to her rank, though she be living apart from him. *Bradshaw v. Beard*, 31 L. J. C. P. 273; 12 C. B. 344. So for costs of suit for restoration of conjugal rights. *Wilson v. Ford*, 3 L. J. N. 27; 37 L. J. Ex. 605; 3 L. R. Ex. 63.

[1] Where a wife has an estate for life in freeholds for her separate use, she can alienate that estate without any acknowledgment. *Lechmere v. Brotheridge*, 32 Beav. 353; though she cannot dispose of her fee simple lands, settled to her separate use, except by deed, duly acknowledged. With respect to personal property, whether vested or contingent, settled to the separate use of a *feme coverte*, she may deal with it as a *feme sole*, and either sell or encumber it. *Id.* The court will not allow the wife of a lunatic to convey her separate estate, under the 3 & 4 Wm. 4, c. 74, s. 91, without some explanation as to the nature of the lunatic's property, and whether it contributes to the wife's support. *Cloud, in re*, 15 C. B. N. S. 833. Married women may be placed on the list of contributors, the contract, being mutually made with reference to and upon the credit of her separate estate, was such as would bind her separate estate if made with an individual; that it was equally possible for her so to bind her separate estate by contract with a company; and that, even if there had been anything in the company's deed of settlement which would justify the shareholders in upsetting the contract she could not herself repudiate it. *In re, The Leeds Banking Company, ex parte Matthewman*, 36 L. J. C. 90. *Semble*, that the contract of a married woman, in order to bind her separate estate, need not be in writing, nor need it expressly refer to the separate estate. *Id.* Where a fund in court belonging to a married woman is small, the course is to settle one-half of it on the wife where a husband is not wholly incapable of maintaining his wife, but is in a fair way of supporting her; but where he is incapable of doing so, to settle the whole fund. *Grove, in re*, 3 Giff. 575; 9 Jur. N. S. 38. A married woman, with separate estate in personalty for life, and a general power of appointment by will does not, by exercising the power, make the fund assets for payment of her creditors. *Blatchford v. Woolley*, 2 Drew. & Sm. 204. *Hoare v. Osborne*, 10 Jur. N. S. 694; 10 L. T. N. S. 258. Money deposited in a bank by a husband, in the joint names of himself and

(D) *Deeds of Separation between Husband and Wife.*[1]

his wife, as a provision for her in case of his death, upon his death, becomes the absolute property of the wife. *Williams v. Davies*, 33 L. J. Prob. 127.

Where advances are made to a wife for the support of a lunatic husband and of herself, his estate is liable to repay those advances, though she has separate estate. *Davidson v. Wood*, 9 Jur. N. S. 589; 32 L. J. Chanc. 400; 11 W. R. 791; 8 L. T. N. S. 476.—L. J.

A married woman, entitled in reversion to a legacy, having been deserted by her husband, obtained a magistrate's order, which, in terms, only affected to protect property acquired by her own industry, or to which she was entitled as trustee:—*Held*, that, notwithstanding the form of the order, the effect of the 8th section of the 21 & 22 Vic. c. 108, was to include in it the reversionary interest. *Whittingham, in re*, 10 Jur. N. S. 818; 12 W. R. 775; 10 L. T. N. S. 368.—V. C. W. An order of protection to a married woman granted by a police magistrate or justices, under the 20 & 21 Vic. c. 85, s. 21, can only be discharged by the magistrate or justice by whom it was made. *Sharp, ex parte*, 10 Jur. N. S. 1018; 33 L. J. M. C. 152; 12 W. R. 756.—Q. B. Where a wife had been deserted by her husband two days after marriage, and she had since obtained a judicial separation against him, a sum of money belonging to her was, upon the petition of the wife and her sister, by whom she had been entirely supported, ordered to be paid to the sister to the exclusion of the husband. *Ford, in re*, 9 Jur. N. S. 740; 11 W. R. 45; 8 L. T. N. S. 625.—R. The 20 & 21 Vic. c. 85 (the Divorce Act), s. 25, applies to property to which a wife is entitled in reversion at the date of the decree, and which subsequently falls into possession. *Insole, in re*, 1 L. R Eq. 470; 35 L. J. Chanc. 177.—R. A wife, having obtained a decree for judicial separation, may avoid a mortgage made by her and her husband of a reversion in personalty which falls in during the joint lives. *Id.* No contract by a married woman with a person who knows her to be married can bind her real estate. *Nicholl v, Jones*, 76 L. J. Ch. 554. A married woman living apart from her husband, on her death-bed gave certain chattels to plaintiff, who took possession of them, but left them in the house of the defendant, who sold them:—*Held*, that plaintiff was entitled to bring trover, as she had sufficient possession against all the world except the husband. *Bourne v. Fosbrooke*, C. P. 11 Jur. N. S. 202. The wife of a convicted felon is a *feme sole* as to the power of disposing by will at least of property acquired after her husband's conviction. *Coward, in goods of*, 11 Jur. N. S. 569; 34 L J. Prob. 120; 13 L. T. N. S. 210. Where a fund subject to a wife's equity to a settlement is settled under the direction of the court, in the absence of special circumstances, the ultimate limitation in default of children will be to the husband, whether he survives his wife or not. *Spirett v. Willows*, 12 Jur. N. S. 538, Ch. on appeal; 14 L. T. N. S. 720. A., upon his marriage, settled real estate of small value, in remainder after the decease of the survivor of himself and his wife, to the use of all the children of the marriage as tenants in common in tail, with cross remainders. He also settled personal estate, after the death of the survivor of himself and his wife, for the benefit of all the children of the marriage in equal shares. A husband may constitute himself a trustee for his wife. The declaration need not be in writing, but the words must be clear, unequivocal, and irrevocable. *Grant v. Grant*, 34 Beav. 623. To constitute a gift by a husband to his wife, he must use words which clearly indicate that he has divested himself of all beneficial interest in the subject-matter. *Id.*

[1] A settlement containing a provision for future separation is only void so far as relates to that provision. *Merryweather v. Jones*, 4 Giff. 499; 10 Jur. N. S. 290; 10 L. T. N. S. 62. *Proctor v. Robinson*, 1 L. R. M. R. 66. To an action by a trustee, on a deed of separation between husband and wife, for non-payment by the husband of the wife's annuity, it is no defence, on equitable grounds, that the husband and wife were induced to live apart by the undue influence, persuasion, and threats of the trustee, who unlawfully harboured the wife: and that, at the time the deed of separation was executed, the wife was pregnant, of which fact she and the trustee kept the husband in ignorance, and thereby induced him to execute the deed; and that he has always been willing to receive back and cohabit with his wife. *Kendall v. Webster*, 1 H. & C. 440. An agreement to live separate is no bar or answer to a suit for restitution of conjugal rights. *Spering v. Spering*, 32 L. J. Mat. Cas. 116; 11 W. R. 810; 9 L. T. N. S. 24. Nor a decree of dissolution of marriage by the divorce court, on the ground of adultery, to an action by the wife's trustee upon a covenant by the husband to pay her an annuity, contained in a deed of separation which recites the wife's acknowledgment of the adultery, which was afterwards made the foundation of the suit in the divorce court. *Goslin v. Clark*, 12 C. B. N. S. 681; 9 Jur. N. S. 520. A deed of separation never acted upon does not deprive a husband's subsequent separation from his wife against her will of the character of desertion. *Cock v. Cock*, 10 Jur. N. S. 806; 33 L. J. Mat. Cas. 157; 10 L. T. N. S. 726. A grant of an annuity to cease on a married man living apart from his wife is void. *Nicholl v. Jones*, 36 L. J. Ch. 554.

(E) *Actions by Husband and Wife.*[1]

(F) *Actions against Husband and Wife.*[2]

I.

IDENTITY.[3]

INCITING to commit Murder. 24 & 25 Vic. c. 100, s. 4; *post*, Murder.

INCLOSURE.[4] 5 Abr. 99. *See* also Commons; Inclosure Acts as to Titles under 3 & 4 Wm. 4, c. 87; of Fields, 6 & 7 Wm. 4, c. 115; 3 & 4 Vic. c. 31; 23 Vic. c. 17; Am. and Ext. 22 & 23 Vic. c. 43; Und. Com. Rep. 23 & 24 Vic. c. 55; 24 Vic. cc. 1, 38; Acts, Am. 20 & 21 Vic. c. 31; Cont. 25 & 26 Vic. c. 73; 26 & 27 Vic. cc. 18, 39; 31 & 32 Vic. c. 89.

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[1] A count for breaking and entering the premises of the husband may be joined with a count by the husband and wife for assaulting and imprisoning the wife. *Morris v. Moore*, 19 C. B. N. S. 359. In actions by husband and wife for an injury to the wife, the claims which, under the 15 & 16 Vic. c. 76, s. 40, a husband may add in his own right are not limited to claims arising consequentially from the injury to the wife. *Hemstead v. Phœnix Gas Light and Coke Company*, 3 H. & C. 745; 11 Jur. N. S. 626; 34 L. J. C. P. 108; 13 W. R. 662. In an action by A., jointly with B. his wife, to recover from the defendant money received by him for the use of the plaintiffs, he demurred upon the ground that it did not appear whether A. was suing in his own right, or in the right of his wife:—*Held*, that it ought to have appeared in what interest B. had been joined as a co-plaintiff with A. and that the misjoinder was the subject-matter of a demurrer. *Cahill v. M'Dowall*, 13 Ir. Com. Law Rep. 481.—C. P.

[2] The court will not order the discharge of a married woman arrested on a *ca. sa.*, if it appears that she has property settled to her separate and inalienable use. *Butler, ex parte, Jay v. Amphlett*, 32 L. J. Exch. 176. After the refusal of the court to discharge a married woman, her husband obtained his discharge under the Bankruptcy Act. On a second application, on that ground, for the discharge of the wife, the court refused to order the discharge on a rule, but gave the applicant leave to bring an *auditâ querelâ*. *Id.* A married woman who has pleaded coverture, but fails to support the plea, is not entitled to be discharged from custody when taken in execution. *Poole v. Conway*, 36 L. J. C. P. 166; 2 L. R. C. P. 241. One who has obtained a sentence of dissolution of marriage in the divorce court, is not liable to be joined in an action for a tort committed by his wife during the coverture. *Capel v. Powell*, 17 C. B. N. S. 743; 34 L. J. C. P. 168. A contract entered into and paid for by a wife, without the knowledge, but for the benefit, of her husband, is valid and binding when ratified by the husband. *Millard v. Harvey*, 34 Beav. 237. A wife is not an admissible witness against her husband in support of a charge of desertion of wife and children preferred by the parish under the Vagrant Act, 5 Geo. 4, c. 83. *Reeve v. Wood*, 34 L. J. M. C. 15; 11 L. T. N. S. 449.—Q. B.

[3] The identity of the persons named in certificates of marriage, baptism, and burial with persons of the same names, is a question entirely for the jury, and the court will not grant a rule to enter a nonsuit on the ground of want of evidence of such identity. *Hubbard v. Lees*, 1 L. R. Exch. 255; 35 L. J. Exch. 169; 14 L. T. N. S. 367.

[4] The court of chancery has no jurisdiction to restrain the enclosure commissioners from proceeding to make their enclosure order, the commissioners not being shown to be acting wrongfully, and it not being a case of irremediable damage. *Harris v. Jose*, V. C. W. 14 W. R. 303, 1 L. R. 34. It is competent to the inclosure commissioners, under 8 & 9 Vic. c. 118, to order the valuer to set a private or an occupation-road over land directed by the provisional order to be allotted to an individual in lieu of his rights in the land to be inclosed, unless the provisional order expressly declares that his allotment shall be exempt from such a burthen. *Grubb v. Inclosure Commissioners for England and Wales*, 13 C. B. N. S. 805.—Ex. Ch. 17 *id.* 606. Local inclosure act gave the commissioners power to raise money to defray the expenses of carrying out the provisions

INCOME and Property Tax.[1] 5 Abr. 103. 16 & 17 Vic. cc. 34, 91; 18 Vic. c. 20; 20 Vic c. 6; 22 & 23 Vic. c. 18; 25 & 26 Vic. c. 22; 26 & 27 Vic. c. 22; 28 & 29 Vic. c. 30; 30 Vic. c. 23; 31 Vic. c. 2.

IN-COMING Tenant. *See post*, Landlord and Tenant.

INCORPOREAL Hereditaments. 5 Abr. 103. *See* Common; Easements; *post*, Watercourse; Way.

INDECENT Assault.[2] 5 Abr. 105.

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of the act by a rate to be made and levied upon the several persons interested in the lands to be inclosed, except the vicar and persons entitled to tithe, and the mayor, aldermen, and burgesses, in respect of the lands for places for public recreation:—*Held*, that, looking at the general frame and object of the act, this clause exempted the vicar from payment of rates in respect of his allotment in lieu of glebe, as well as his allotment in lieu of tithes. *Eddison v. Brookes*, 11 L. T. N. S. 378.—C. P. An act, after directing the commissioners to award a certain portion of the waste lands, in cattle gates to the lord of the manor, in full satisfaction for all his rights as such lord, instead of directing allotments to be made to each person interested, directed it to be enjoyed by them in a particular manner, namely, by cattle gates and stinted pasture:—*Held*, that the right to the soil, and therefore the exclusive right of sporting over the stinted pasture, was thereby taken from the lord of the manor. *Robinson v. Wray*, 1 L. R. C. P. 490. As to repairing and widening drains over allotments, see *Biglin v. Wylie*, 36 L. J. Q. B. 307. A. and his predecessors, owners and occupiers of an ancient copyhold inclosure, had from time immemorial repaired and maintained the fences between it and the adjacent common land of the manor. Under a recent inclosure act, that portion of the common land abutting on the ancient inclosure was sold and conveyed by the commissioners to a person represented by B. the conveyance imposing on the purchaser no conditions as to the making or repairing of fences:—*Held*, in replevin for beasts distrained that the inference for a jury to draw was, that A. was bound, as against B. to repair and maintain the fences. *Barber v. Whitely*, 11 Jur. N. S. 822; 34 L. J. Q. B. 212; 13 L. T. N. S. 319. The right of sporting over the allotment to commoners not reserved to the lord of the manor is where the reservation of the lord's right of sporting occurring in the clause reserving seignorial, not territorial, rights. *Ewart v. Graham*, 7 H. L. C. 331. *Lord Leconfield v. Dixon*, 1 L. R. 2 Ex. 202; 36 L. J. 102; 3 L. R. Ex. Ch. 30. Where a person is in possession of an encroachment from a common, which he claims to be of more than twenty years standing, such encroachment cannot be deemed to be "parcel of the land subject to be inclosed," although the encroachment in dispute has been inserted in the commissioners' map of lands to be enclosed, and the person in possession has not made objection thereof. *Chilcote v. Youlden*, 3 Ell. & Ell. 7. An application had been made, under 8 & 9 Vic. c. 118, to the inclosure commissioners, to inclose lands alleged by the parties applying to be common lands, but alleged by the plaintiff to be his own exclusive property. The commissioners had given time to the plaintiff to vindicate his rights, but he brought no action at law. He afterwards filed a bill to restrain the defendants from proceeding before the commissioners:—*Held*, that the court had no jurisdiction to interfere. *Harris v. Jose*, 14 W. R. 303; 13 L. T. N. S. 699.

[1] A debtor, making payments to his creditor from time to time for interest, without deducting property-tax, will not be allowed, upon finally settling the debt, to deduct the amount of back payments in respect of such tax. *Turner, ex parte*, 11 L. T. N. S. 352. Though in dealings between merchants, in discounting bills, &c., and in loans made for short periods, the income tax is not deducted, yet in a mortgage transaction the mortgagor is entitled to do so. *Mosse v. Salt*, 32 Beav. 269. A. devised farms and hereditaments to trustees to secure a yearly rent-charge to his wife for life, to be paid by two half yearly payments in every year, "without any deduction or abatement whatsoever on account of any taxes, charges, impositions, or assessments already or to be thereafter taxed, charged, assessed, or imposed on the hereditaments, or on the rent-charge, or on the wife or her assigns, by authority of Parliament or otherwise howsoever." Payment of this rent-charge was secured by powers of distress and entry reserved to the wife, and by a term of years created in the trustees:—*Held*, that she was entitled to have the rent-charge paid to her in full, and free from deduction in respect of income-tax imposed under 5 & 6 Vic. c. 35, or subsequent acts. *Festing v. Taylor*, 3 B. & S. 217; 9 Jur. N. S. 44; 32 L. J. Q. B. 41.—Ex. Ch. See 33 L. J. Ch. 593. The income-tax commissioners have no power to commit a defaulting collector of income-tax in the county of Middlesex to Newgate; the commitment should be made to Whitecross-street prison. *Masters, in re*, 33 L. J. Q. B. 146.

[2] If a girl of ten years of age consent to indecent liberties, the person who takes

INDECENT Exposure.[1]

Prints. *See post,* Obscene Prints. 5 Geo. 4, c. 83, s. 4; 1 & 2 Vic. c. 38, s. 2; 20 & 21 Vic. c. 83. s. 8.

INDEMNITY against Defending an Action.[2] *See* Guarantee; *post,* Principal and Surety.

INDICTMENTS. 5 Abr. 405. Vexatious; 22 & 23 Vic. c. 17.

I. What Offences are Indictable, and Parties, p. 239.
II. Of the Form of an Indictment, *id.*
III. Joinder and Election of Counts, p. 240.
IV. Amending, Quashing, Demurring to, and Pleading, *id.*
V. Relative to the Removal.
VI. Of the Trial, Evidence, Verdict, and Judgment.
VII. Costs of Prosecution.

I. What Offences are Indictable.[3]

II. Of the Form of an Indictment.[4]

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them cannot be convicted of an assault. *R. v. Johnson,* 34 L. J. M. C. 192.

[1] It is not necessary, in order to support a conviction for indecently exposing the person, that the place of exposure, to be a public place, should be in a highway. If it is a place where a great number of the public may be affected by the act, it is sufficient. *Reg. v. Thallman,* 1 L. & C. C. C. 326; 9 L. T. N. S. 425; 33 L. J. M. C. 58. An indictment for indecent exposure, charging the offence to have been committed on a highway, is not sustained by evidence that the offence was committed in a place near the highway, though in full view of it. *Reg. v. Farrell,* 9 Cox, C. C. 446. An indecent exposure seen by one person only, and capable of being seen by one person only, is not an offence at common law. *Secus,* if there are other persons in such a situation as that they may be witnesses of the exposure. *Id.*

[2] A captain of a ship, to avoid expense, accepted the offer of a company to tranship some goods temporarily on board one of their vessels. The goods were afterwards removed to another vessel for the greater convenience of the company, but it was unfit to hold the goods, and they were lost. The captain at the end of his voyage declined to pay the value of the goods to the consignees, who held the bills of lading; he was then sued, and judgment was given against him. In an action to be reimbursed the damages, and the costs of the proceeding against the captain:—*Held,* that the company was bound to pay the value of the goods only, and not the costs of the action, as it ought not to have been defended. *Ronneberg v. Falkland Islands Company,* 17 C. B. N. S. 1; 10 Jur. N. S. 940; 12 W. R. 714; 10 L. T. N. S. 530.

[3] Under 22 & 23 Vic. c. 17, it is sufficient if the consent of the judge to the prosecution is given in writing; and no previous summons or notice to the party, or even affidavit of the facts, is necessary. *Reg. v. Bray,* 3 B. & S. 255; 9 Cox, C. C. 215. The court will not interfere with the exercise of the discretion of the judge under this act. *Id.* It is questionable whether committing fornication in open day on a common, in the sight of one witness only, is an indictable offence. *R. v. Elliot,* 1 L. & C. 103. A public body empowered by statute to indict and take other necessary proceedings, must indict in the name of the Queen, and sue in equity in the name of the attorney-general. *Bermondsey v. Bram,* 35 Beav. 224. The proprietor of works not in themselves injurious is liable to be indicted for a public nuisance caused by the acts of his workmen in carrying on the works. *Reg. v. Stephens,* 7 B. & S. 710.

[4] In felonies the indictment must allege them to have been done feloniously; and therefore, where a statute creates a felony it is not sufficient to charge the offender merely in the terms of the statute. *Reg. v. Gray,* 1 L. & C. C. C. 365; 9 Cox. C. C. 417; 10 Jur. N. S. 160; 33 L. J. M. C. 78; 9 L. T. N. S. 733. It suffices in an indictment for stealing the property of a joint-stock company, to allege the property to belong to one of the partners. *R. v. Pritchard,* 30 L. J. M. C. 169. An indictment charging a conspiracy by divers false pretences against the form of the statute R. B. of his money

III. Joinder and Election of Counts.[1]

IV. Amending, Quashing, Demurring to, and Pleading.[2]

VI. Of the Trial, Evidence, Verdict, Discharging Jury, and Judgment.[3]

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sufficiently alleges a conspiracy to obtain money by false pretences. *Latham v. Reg.* 33 L. J. M. C. 197; 5 B. & S. 635. The court will not permit the venue in an indictment to be changed for any other cause than the inability to obtain a fair trial in the original jurisdiction. *Reg. v. Patent Eureka and Sanitary Manure Company (Limited)* 13 L. T. N. S. 365.—Q. B.

[1] Each count in an indictment is, to all intents and purposes, a separate indictment in itself. *Latham v. Reg.* (in error) 9 Cox, C. C. 516; 10 Jur. N. S. 1145; 33 L. J. M. C. 197; 10 L. T. N. S. 571.—Q. B. When an indictment contains several counts, it is not ground of error that no verdict has been given on some of them, provided a verdict has been found on one good count, and judgment given accordingly. *Latham v. Reg.* (in error) 5 B. & S. 635. It is no ground of objection to an indictment in arrest of judgment that it contains several counts for distinct felonies. *Reg. v. Heywood*, 1 L. & C. C. C. 451; 9 Cox. C. C. 479; 33 L. J. M. C. 133; 10 L. T. N. S. 464. The proper course to pursue, when such joinder has a tendency to embarrass a prisoner in his defence, is to apply to the judge either to quash the indictment or to compel the prosecutor to elect on which count he will proceed. *Id.* See *R. v. Halman*, 1 L. J. 617. An indictment contained counts charging various misdemeanours, amongst them counts for conspiracy. There being evidence to go to the jury upon the conspiracy only. Prosecution made to elect upon which count the case should be left to the jury. *Reg. v. Braun*, 9 Cox, C. C. 284. Duplicity is no ground of error. *Nash v. Reg.* (in error) 9 Cox, C. C. 424; 10 Jur. N. S. 819; 33 L. J. M. C. 94; 9 L. T. N. S. 716.—Q. B. Certain wharfingers and their servants being indicted in various counts for conspiracy to defraud, by false statements as to goods deposited with them, and insured by the owners against fire; one set of counts being laid with reference to a fire occurring on the 7th of June, 1864, and another, with reference to a fire occurring on the 25th of November, 1864:—*Held*, that the prosecution must elect on which of the two transactions, in the first instance, to rely. *Reg. v. Barry*, 4 F. & F. 389.

[2] The provisions of the Vexatious Indictments Act (22 & 23 Vic. c. 17) must be complied with in respect to every count of an indictment to which they are applicable, and any count in which they have not been complied with, must be quashed. *Reg. v. Fuidge* 1 L. & C. C. C. 390; 9 Cox, C. C. 430; 10 Jur. N. S. 160; 33 L. J. M. C. 74; 12 W. R. 351; 9 L. T. N. S. 777. When it is made clear, either on the face of an indictment or by affidavit, that it has been found without jurisdiction, the court will quash it on motion. *Reg. v. Heane*, 9 Cox, C. C. 433; 10 Jur. N. S. 724; 33 L. J. M. C. 115; 9 L. T. N. S. 719.—Q. B. But it is not necessary that the performance of the conditions required by sect. 1, 22 & 23 Vic. c. 17, before the finding of a bill by a grand jury, in respect of the offences therein enumerated, should appear on the record. *Knowlden v. Reg.* (in error) 9 Cox, C. C. 483; 10 Jur. N. S. 1177; 33 L. J. M. C. 219; 12 W. R. 957; 10 L. T. N. S. 691.—Q. B. An indictment charged with the intent to kill and murder Annie Welton. The prosecution failed to prove the child had ever borne such a name:—*Held*, that the indictment might be amended. *Reg. v. Welton*, 9 Cox, C. C. 297. See *Reg. v. Pearce*, 9 Cox, C. C. 258; 9 Jur. N. S. 647; 7 L. T. N. S. 597. In an indictment for stealing "fowls," query whether the omission of the word "domestic" is more than a mere "formal defect," which can be amended. *Reg. v. Lonsdale*, 4 F. & F. 56. Where a clear defect of jurisdiction appears on the face of an indictment, or is shown by affidavit, the court will, on the application of the defendant, quash the indictment after he has pleaded. In a doubtful case the court will exercise its discretion, and leave the defendant to his remedy by writ of error. *Reg. v. Keane*, 4 B. & S. 947. The secretary of a friendly society, of which A. B. and others were the trustees, was charged with embezzling money belonging to the society. In the indictment the property was laid as "of A. B. and others," without alleging that they were trustees of the society:—*Held*, that the indictment might be amended by adding the words "trustees of," &c. *Reg. v. Marks*, 10 Cox, C. C. 367.

[3] Counsel for the prosecution opening no case against one prisoner, statements made by him not to be used against another except in a regular way of evidence. *Reg. v. Gardiner*, 9 Cox, C. C. 332. It being a general principle of criminal procedure, that counsel for the prosecution should consider themselves not merely as advocates for a party, but as ministers of justice, and not as struggling for a verdict, but as assistants in the ascertainment of truth according to law; therefore, counsel for the prosecution ought not to exercise their right of summing up the evidence where the prisoner calls no witnesses, unless counsel really, in their discretion, deem it to be necessary for the purposes of justice. *Reg. v. Berens*, 4 F. & F. 842. To render a deposition of a witness absent through illness admissible in evidence on the trial of a prisoner for felony, it must have been taken in the presence of the magistrate as well as of the prisoner.

Reg. v. Watts, 9 Cox, C. C., 395; 33 L. J. M. C., 63.—C. C. R. To the deposition of a marksman, the magistrate's clerk attached the prisoner's name, so that it appeared to have been signed by the prisoner's mark:—*Held*, that the deposition was properly received in evidence against him. *Reg. v. Mullen*, 9 Cox, C. C. 339. A solicitor for a prisoner is bound to produce a document, when the prisoner is charged with an offence in respect of such document. *Reg. v. Brown*, 9 Cox, C. C., 281. The deposition made by a witness was allowed to be put into his hands to refresh his memory, and he was then asked what he said about a fact which he had answered before in the negative, and answered the question affirmatively. *Reg. v. Quin*, 3 F. & F. 818. There may be incidents attending an approaching parturition of such a nature as to make it an illness within the meaning of the 11 & 12 Vict. c. 42, s. 17. *Reg. v. Stephenson*, 1 L. & C., C. C., 165; 31 L. J., M. C., 147. And the question whether the illness proved is or is not within the statute is a question for the determination of the judge presiding at the trial. In the absence of medical evidence, deposition not allowed to be read. *Reg. v. Welton*, 9 Cox, C. C., 296. The sole witness to the commission of an offence having sworn that she did not know the prisoner at the time, evidence was admitted for the defence that she had in fact known him for years. *Reg. v. Dennis*, 3 F. & F. 502. A person *de facto* filling an office carrying with it the custody of the records of the court, may lawfully give a certificate of a previous conviction, although he may not hold such office *de jure*. *Id.*—It is the duty of the judge presiding at a trial to decide as to the competency of a witness; and if he has admitted a witness to give evidence, but upon proof of subsequent facts affecting the capacity of the witness and of observations of his subsequent demeanour, the judge changes his opinion as to his competency, the judge may stop the examination of the witness, strike his evidence out of the notes, and direct the jury to consider the case exclusively with reference to the evidence of the other witnesses. *Reg. v. Whitehead*, 1 L. R. C. C. R. 33; 35 L. J. M. C. 186; 14 W. R. 677; 14 L. T. N. S. 489. Where two prisoners are jointly indicted for a felony and plead not guilty, but only one is given in charge to the jury, the other is an admissible witness, although his plea of not guilty remains on the record undisposed of. *Winsor v. Reg.* (in error), 1 L. R. Q. B. 390; 12 Jur. N. S. 561; 35 L. J. M. C. 161; 14 W. R. 695; 14 L. T. N. S. 567.—Ex. Ch. A magistrate must sign the deposition at the foot of such deposition. *Reg. v. Richards*, 4 F. & F. 860. At the end of the last sheet suffices, 4 L. J. N. 467. On an indictment for administering poison, the police having, in consequence of certain information, found the bottle containing the poison in a place used by the prisoner, are bound to disclose from whom they had the information. *Reg. v. Richardson*, 3 F. & F. 693. The practice of questioning prisoners by policemen, and thus extracting confessions from them, though it does not render the evidence so obtained, inadmissible, is one which is strongly reprehensible, and which ought not to be permitted. *Reg. v. Mick*, 3 F. & F. 822. An answer by a prisoner after his arrest, to a question asked by a policeman, is inadmissible. *Reg. v. Bodkin*, 9 Cox, C. C. 403. Upon a trial for breaking into a booking-office at a railway station, evidence was admitted that the prisoners had, on the same night, broken into three other booking-offices belonging to three other stations on the same railway, the four cases being all mixed up together. *Reg. v. Cobden*, 3 F. & F. 833.—Bramwell. *See Reg. v. Rearden*, 4 F. & F. 76. After the jury has retired to consider their verdict in a criminal case, whether felony or misdemeanour, and has remained in deliberation a full and sufficient time without being able to agree upon a verdict, it is in the discretion of the judge to discharge them if there is no reasonable prospect of their agreeing upon a verdict. *Winsor v. Reg.* (in error) 1 L. R. Q. B. 289; 12 Jur. N. S. 91; 35 L. J. M. C. 121; 14 L. T. N. S. 195. Affirmed on appeal, 1 L. R. Q. B. 390; 12 Jur. N. S. 561; 35 L. J. M. C. 161; 14 W. R. 695; 14 L. T. N. S. 567.—Exch. Cham. The exercise of such discretion by a judge cannot be reviewed by a court of error. *Id.* The maxim, that a man cannot be put in peril twice for the same offence, means that a man cannot be tried again for an offence upon which a verdict of acquital or conviction has been given, and not that a man cannot be tried again for the same offence where the past trial has proved abortive and no verdict was given. *Id.* Where a jury return what the judge considers to be an improper verdict, he may direct them to reconsider it, and is not bound to record it unless they insist upon his doing so. Where the jury reconsider their verdict and alter it, the second is the real verdict of the jury. *Reg. v. Meany*, 1 L. & C. C. C. 213; 9 Cox, C. C. 231. A counsel who has appeared for a prisoner at the trial, but has not been instructed to appear for him in the court of appeal, may, as *amicus curiæ*, cite authorities for the information of the court, but will not be allowed to argue. *Reg. v. Thomas*, 12 W. R 108; 33 L. J. M. C. 22; 9 L. T. N. S. 488. Where there is a difference of opinion amongst the judges upon a question of law, the case reserved will be argued before the fifteen judges; but where the court differed upon a question of fact only, judgment was given according to the opinion of the majority that a conviction should be quashed. *Reg. v. Burrell*, 1 L. & C. C. C. 354; 12 W. R. 149; 9 L. T. N. S. 426. By 28 & 29 Vic. c. 18, s. 1, in all criminal cases it shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is

VII. Costs of Prosecution.[1]

INDUSTRIAL Schools and Societies.[2] (*See* 29 & 30 Vic. c. 118, repealing prior Acts); 15 & 16 Vic. c. 31; 17 & 18 *id.* cc. 25 & 26, *id.* c. 187.

INFANT. *See* 5 Abr. 185, Abduction; Affiliation; Apprentice; Bastardy; Bankruptcy; *post*, Outlawry; Parent and Child.

I. Who is deemed an Infant, and Protection and Custody of, p. 242. As to Marriage of, *see* 18 & 19 Vic. c. 43; Settlements by, *see* 23 & 24 Vic. c. 83.

II. Rights and Liabilities of on Contracts, p. 243.

III. Rights and Liabilities of as to Torts, p. 244.

IV. Liability for Criminal Acts, p. 244.

V. Actions by and against Infants, p. 244.

I. Who is deemed an Infant, and Protection and Custody of. *See* 1 Wm. 4, c. 65, 2 & 3 Vic. c. 54.[3]

not requisite. By s. 8, comparison of a disputed writing with any writing, proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury. By s. 3, a party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement. By s. 4, if a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the indictment or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it. S. 2, if any prisoner or defendant shall be defended by counsel, but not otherwise, it shall be the duty of the presiding judge, at the close of the case for the prosecution, to ask the counsel for each prisoner whether he intends to adduce evidence; and in the event of none of them thereupon announcing his intention to adduce evidence, the counsel for the prosecution shall be allowed to address the jury a second time in support of his case, for the purpose of summing up the evidence. And by s. 5, a witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the indictment or proceeding, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; provided always, that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he may think fit.

[1] By 29 and 30 Vic. c. 52, the law relating to the expenses of prosecutions is extended to the payment of expenses incurred in attending before magistrates. Under 25 & 26 Vic. c. 61, s. 19, the court has no power to direct the costs of an indictment for non-repair of a road, preferred by the direction of justices against the inhabitants of a parish, to be paid by them where the jury has found a verdict of not guilty, on the ground that the road was a private road, and not a highway. *Reg. v. Buckland*, 6 B. & S. 397.

[2] Under the 6th section of 25 & 26 Vic. c. 87, which enacts, that "the certificate of registration under that act shall vest in the society all the property that may at the time be vested in any person in trust for the society," it was held, that an action on a bond given to trustees of an industrial society before the act, may, after registration under the act, be brought in the name of the newly-incorporated body. *The Queenshead Indust. Soc. (Limited) v. Pickles*, 34 L. J. Ex. 1 L. R. 1. The 25 & 26 Vic. c. 87, s. 6, does not empower a creditor of an industrial society, formed prior to this act, but having obtained a certificate of registration under this act, to bring his action after such registration against the society in its registered name. *Linton v. the Blakeney Industrial Provident Society*, 13 W. R. 843. This act we have seen includes property not in its narrow sense, but even a right of action. *Queenshead Industrial Society v. Pickles, supra.*

[3] According to the common law the age at which a male child is presumed to attain

II. Rights and Liabilities of on Contracts.[1]

the age of discretion is fourteen years; and a court of common law will not, by writ of habeas corpus, enforce the residence of a male infant of that age with its father contrary to the wishes of the child. *Reg. v. Howes*, 30 L. J. M. C. 48; *In re Connor*, 16 Ir. C. L. 112. The court will not take a child of tender years from the custody of its mother on the ground that the mother's religion differs from that of the deceased father, and that such change of custody is requisite to the training of the child in the father's religion. *Austin, In re; Austin v. Austin*, 11 Jur. N. S. 101; 34 L. J. Chanc. 499; 3 W. R. 332; 11 L. T. N. S. 616, R. The general rule is, that an infant is to be brought up in the religion of the father. *Newbery, In re*, 1 L. R. Chanc. App. 263; 12 Jur. N. S. 154; 35 L. J. Chanc. 330; 14 W. R. 360; 13 L. T. N. S. 781, L. J. *See Hill v. Hill*, 31 L. J. Ch. 505. In cases relating to the care of infants, the benefit of the infant is the foundation of the jurisdiction, and the test of its proper exercise. On this subject there ought to be a perfect reciprocity of action between the courts of England and Scotland, although, as to judicial jurisdiction, the two countries are to each other independent foreign countries. *Stuart v. Bute* (*Marquis*), 9 H. L. Cas. 440.

In May, 1845, a minor, whose father was settled in S., left his father's house for London, with his father's consent, and entered the metropolitan police. He continued to live in London, and to serve in the police from that time till May 1846; when, being still under age, he married. During the whole time between his coming to London and his marriage, he might have returned to his father's house to reside, but never did so. At Lady day, 1846, his father gained a settlement in H.:—*Held*, that the son was not emancipated until his marriage; that, consequently, he derived from his father the settlement in H.; so that the son's wife and children were not removable to S. *Reg. v. Selborne*, 2 El. & El. 275. The parties to whom a writ of habeas corpus, sued out by the father of a male infant, was addressed, returned, that the infant at the time of issuing the writ was over fourteen years of age and under sixteen:—*Held*, that the father's application must be refused, inasmuch as at the age of fourteen a male infant is at liberty to exercise a discretion as to his own place of abode. *Connor, In re*, 16 Ir. Com. Law Rep. 112, Q. B.

[1] A lease made by an infant is not void, but voidable only, notwithstanding that the rent reserved is not the best obtainable. *Slator v. Brady*, 14 Ir. Com. Law Rep. 61. *See Sexton v. Staniland*, 4 Giff. 67. Where an estate vests in an infant by operation of law, and he has not disclaimed, he becomes liable for rent, notwithstanding his infancy. *Kelly v. Coote*, 5 Ir. Com. Law Rep. 469, C. P. A mandamus to compel a registry of a transfer of shares in a railway company to an infant was refused. *Reg. v. Midland Counties and Shannon Junction Railway Company*, 9 L. T. N. S. 155, Ir. Q. B. Cigars and tobacco, in the absence of special circumstances, are not "necessaries" for a commissioned officer in the army; and a direction of the judge to the jury, leaving the question to them, held bad, and a new trial granted. *Bryant v. Richardson*, Ex. 14 W. R. 401. A female infant, who has no property of her own to settle, may contract with a solicitor for the preparation of a marriage settlement, under which provision is made for her benefit, as such may be considered a necessary suitable to her condition. *Helps v. Clayter*, 34 L. J. C. P. 1; 17 C. B. 553. In *Ryder v. Wombwell*, the question, whether articles supplied to an infant were "necessaries," having regard to his station in society and his circumstances, was considered; and further, in what instances the question is one of fact, to be left to the jury, and in what a question of law to be decided by the judge; the court in substance holding, *dissentiente* Bramwell, B., that where the article is useful but luxurious, it is always a question for the jury:—*Held*, however, that a costly drinking-cup for a present was not a necessary, and that the judge ought to have withdrawn the question from the jury:—*Held*, also, *dissentiente* Bramwell, B., that evidence tendered by the infant to prove that he had previously purchased like articles from other persons than plaintiff, was rightly rejected by the judge. 3 L. R.; Ex. 90; 37 L. J. 47; 17 L. T. 609; 16 W. R. 515. The court, after taking time to consider, were of opinion that the judge must be supposed to know as much as the jury can know without evidence what is the usual and normal state of things, and, consequently, whether any particular article may be a necessary under such usual state of things; that the judge must determine whether the case casts on the plaintiff the onus of showing that the articles are necessaries, and then whether there is sufficient evidence to satisfy that onus; that in this case there was not evidence on which the jury could reasonably find that either of the articles was necessary for the defendant; and that, therefore, the judgment of the Court of Exchequer should be reversed and a nonsuit entered. Judgment reversed accordingly. 38 L. J. Ex. Ch. 8. *See* some useful remarks, 3 L. J. N. 758. In an action for necessaries supplied to the wife before the date of her marriage, and while she was an infant under twenty-one:—*Held*, that the true test by which to judge whether the things supplied were necessaries was the real position of the husband in society, and not the apparent or assumed condition which he may take upon himself. *Stacy v. Firth*, 16 L. T. N. S. 498. The defendant pleaded infancy, to which the plaintiff replied a ratification after full age. In support of the replication, the plaintiff put in a bill of the items of the demand, at the

III. Rights and Liabilities of as to Torts.[1]

IV. Liability for Criminal Acts.[2]

V. Of Actions by and against Infants.[3]

INFORMATION, Criminal. *See* Indictments; Quo Warranto; Justices; Revenue.

INFORMER. *See post*, Qui Tam Action.

INFRINGEMENT. *See* Copyright; *post*, Patent.

INHERITANCE. *See* Estate. 4 Abr. 268. Fee-simple, *id.* p. 440.

INJUNCTIONS under the Common-Law Procedure Act, 1854, and to restrain Proceedings at Law.[4]

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foot of which the defendant had written subsequently to his coming of age as follows:—"I certify that this account is correct and satisfactory," with the addition of his signature:—*Held*, that the document simply amounted to a recognition of the correctness of the items of the account, and contained nothing which can be construed as a promise to pay. *Rowe v. Hopwood*, 3 L. J. N. 227; 38 L. J. Q. B. 1. It appears that the case of an infant entitled to an estate in fee, which is determinable on a contingent event, is not within 1 W. 4, c. 65, s. 17, but where all the parties interested in the fee are petitioners the court will sanction the granting of a building or mining lease. *In re Clark*, 1 L. R. Ch. Ap. 292; 35 L. J. 314.

[1] Contributory negligence by an infant has the same effect in disentitling him to maintain an action as in the case of an adult. *Abbott v. Macfie*, and *Hughes v. Macfie*, 10 Jur. N. S. 682; 33 L. J. Exch. 177; 12 W. R. 315. An infant, a Cambridge undergraduate, hired a mare for a ride along the road, being expressly told that she was not fit for leaping. The mare was put to a fence, and in taking it fell upon a stake and was so injured that she died:—*Held*, that he was guilty of an actionable wrong, and therefore liable irrespective of the question of necessaries. *Burnard v. Haggis*, 14 C. B. N. S. 45; 9 Jur. N. S. 1325; 32 L. J. C. P. 189. The nature and extent of the liability of an infant or a married woman cannot be changed by suing *ex delicto* in respect of a claim arising on a contract. *Id.* The defendant having placed a crushing-machine in a public market for exhibition, a child was injured by putting his fingers between the cog-wheels while another child was turning the handle:—*Held*, that the defendant was not liable for negligence in leaving the machine unguarded where it was; and that the injury sustained by the child was the direct result of the improper meddling with the machine. *Mangan v. Atherton or Atterton*, 1 L. R. Exch. 239; 35 L. J. Exch. 161; 14 W. R. 771.

[2] An infant under the age of seven cannot incur the guilt of felony. *Marsh v. Loader*, 14 C. B. N. S. 535; 11 W. R. 784. The defendant caught a child in the act of stealing a piece of wood from his premises, and gave him into custody. The child was discharged by the magistrate on the ground that he was under the age of responsibility, and he afterwards by his next friend brought an action against the defendant for false imprisonment:—*Held*, that a plea of felony was no answer to the action; and, the jury having given him 20*l.* damages, the court declined to interfere on the ground of excess. *Id.*

[3] The 15 & 16 Vic. c. 76, has not abolished the necessity of appointing a guardian to an infant defendant before the plaintiff can sign judgment by default. *Jarman v. Lucas*, 15 C. B. N. S. 474; 33 L. J. C. P. 108. Where the guardian of infants applies for leave to appeal *in formâ pauperis*, the court requires an affidavit that the infant ward cannot get a solvent next friend to prosecute the appeal. *Gaudin v. Messervy*, P. C.; 2 Moo. P. C. C. N. S. 372. The court refused to appoint a guardian to an infant when the object of the suit was to prove his illegitimacy. *In re Chaplin*, 36 L. J. P. & M. 90. Where an infant, in an action of tort purely personal, sues by his next friend and dies after verdict found for him, and before judgment signed, the next friend may sign judgment for the amount of the damages and taxed costs. *Kramer v. Waymark*, 1 L. R. Ex. 241; 12 Jur. N. S. 395; 35 L. J. Ex. 148; 14 W. R. 659; 14 L. T. N. S. 368.

[4] The court will not grant a writ of injunction under sect. 82 of the 17 & 18 Vic. c. 125, when by so doing the defendant would be called upon to do an illegal act. *London and North Western Railway Company v. Webb*, 12 W. R. 51; 9 L. T. N. S. 291. Although a court of equity has no right to interfere with the attempt to enforce a legal title for an interest, however small, it is its duty to inquire whether such interest was being enforced *bonâ fide*, or for an equitable purpose; and if a legal title were used at law for a purpose inconsistent with good faith, and with the equitable rights of another party, then a court of equity would in-

INJUNCTION under Railways and Canals Traffic Act, 1864. *See* Carrier.

INJURIES. *See* titles according to nature of.

INNS, Ale, and Refreshment-Houses. 5 Abr. 185, *ante* p. 14.

I. What is an Inn? p. 245.

II. Of his Responsibility for the Goods of his Guests, p. 246.

III. Of the Obligation of the Innkeeper to receive Goods of Guests, p. 246.

IV. Breach of License, p. 246.

V. Of his Right of Lien, p. 246.

VI. Hours of Opening, &c. on Sunday, p. 246. *See* 1 Abr. p. 281; and *Harris v. Jenns*, 9 C. B. 152; 30 L. J. M. C. 183. *Taylor v. Humphreys*, 30 L. J. M. C. 242. *Tennant v. Cumberland*, 1 El. & El. 401. *Reg. v. Whiteley*, 3 H. & N. 143; 27 L. J. M. C. 217. *Atkinson v. Sellers*, 28 *id.* 12.

VII. Refreshment-Houses, p. 247. *See* Wine and Beer Act, 32 & 33 Vic. c. 27.

I. What is an Inn?[1]

terfere. *Buckland v. Gibbons*, 9 Jur. N. S. 781; 32 L. J. Chanc. 391; 11 W. R. 483; 8 L. T. N. S. 129. The circumstance that a lessor has a right of re-entry for breach of a covenant does not preclude him from coming to a court of equity to restrain the commission of the breach. *Parker v. Whyte*, 32 L. J. Ch. 520. Where a company was being voluntarily wound up, and a creditor, pending the proceedings under the winding-up, brought an action against the company:—*Held*, that an injunction must be granted to restrain the action. *Keynsham Company, In re*, 8 L. T. N. S. 687. Where a nuisance is only temporary, the court will refuse to grant a mandatory injunction on an interlocutory application before the hearing. *Atty.-Gen. v. Metropolitan Board of Works*, 9 L. T. N. S. 139. *Cook v. Forbes*, V.C.W.; 5 L. R. Eq. 166; 37 L. J. 178; 17 L. T. 371. The court has power to interfere with a public body in the exercise of powers conferred by act of parliament, where the exercise is not *bonâ fide*. *Biddulph v. St. George*, 9 Jur. N. S. 953; 8 L. T. N. S. 558—L. J. Query, whether the amount of damage must be contemplated with reference to the *present*, not future possible user of the premises? *Calcraft v. Thompson*, L. C.; 15 W. R. 387.

An injunction was granted restraining defendants from opening letters addressed to their predecessors in business, from whom they had obtained exclusive licenses to work particular patents assigned. *Scherle v. Brackell*, 11 W. R. 796. A demurrer to so much of a declaration as claims a writ of injunction will not be allowed, unless the facts disclosed show beyond all doubt that no injunction could be granted. *Bilke v. London, Chatham, and Dover Railway Company*, 3 H. & C. 95. A plaintiff lent some photograph portraits to a person who became insolvent, and his assignees having offered the photographs for sale by auction, the defendant purchased them; and by photographically printing from negatives he obtained reduced copies, which he published and sold:—*Held*, that the plaintiff was entitled to a writ of injunction to restrain the defendant from taking or selling any more copies of the photographs, and also to recover them or their value in detinue. *Mayall v. Higbey*, 1 H. & C. 148. A plaintiff obtained a verdict and judgment against the defendant, a shareholder in a cost-book copper-mining company, in an action for a nuisance caused by working a mine. The plaintiff having afterwards obtained a rule nisi for an injunction, the court discharged the rule, it appearing by affidavit that the defendant had *bonâ fide* sold his shares before notice of the application. *Matthews v. King*, 3 H. & C. 910. A defendant cannot plead to a claim in a declaration for a writ of injunction. *Booth v. Taylor*, 4 H. and C. 70; 35 L. J. Ex. 56. The court will not grant an injunction to restrain a railway company from charging a carrier otherwise than equally with all other persons. *Sutton v. South Eastern Railway Company*, 11 Jur. N. S. 935; 35 L. J. Ex. 38; 14 W. R. 133; 13 L. T. N. S. 438. An injunction must be founded either upon a contract, or an injury to property of a permanent nature. *Id.* Where, in an action for an alleged nuisance, a writ of injunction has issued, commanding the defendant to pay the costs of the writ, the court will stay the proceedings in respect of the costs until after the trial of the cause. *Grindley v. Booth*, 3 H. & C. 669; 11 Jur. N. S. 745; 34 L. J. Ex. 135; 12 L. T. N. S. 469.

[1] By sect. 4, 26 & 27 Vict. c. 41, the word "inn" shall mean any hotel, inn,

II. Of his Responsibility for the Goods of his Guests.[1]

III. Of the Obligation of the Innkeeper to receive Goods of Guests.[2]

IV. Breach of License.[3]

V. Of his Right of Lien.[4]

VI. Hours of Opening and Closing on Sunday.[5]

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tavern, public-house, or other place of refreshment, the keeper of which is now by law responsible for the goods and property of his guests; and the word "innkeeper" shall mean the keeper of any such place.

[1] By sect. 1, 26 & 27 Vic. c. 41, no innkeeper shall, after 13th July, 1863, be liable to make good to any guest any loss of or injury to goods brought to his inn, (not being a horse or other live animal, or any gear appertaining thereto, or any carriage,) to a greater amount than 30*l.*, except where such goods shall have been stolen, lost, or injured through the wilful act, default, or neglect of such innkeeper or any servant in his employ, or where such goods shall have been deposited expressly for safe custody. Provided that in the case of such deposit it shall be lawful for such innkeeper to require that such goods shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same. Notice of act to be conspicuously exhibited in hall or entrance. By an arrangement between an innkeeper and her ostler, he had the profit of the stables, paying no rent, but providing hay, corn, &c., and supplying not only the guests in the inn, but residents in the town, whose horses he was allowed to take care of:—*Held*, that the relation of innkeeper and guest subsisted between the parties, and the former was liable for injury done to the horse. *Day v. Bather*, 2 H. & C. 14; 32 L. J. Ex. 171; 8 L. T. N. S. 205. The word "wilful" applies only to the following word, "act," and not to the next following words, "default or neglect." *Squire v. Wheeler*, 16 L. T. N. S. 93—Byles. There is no obligation on the part of the guest at an inn to lock or fasten the door of the room in which he sleeps; and the omission to do so does not discharge the innkeeper from his liability to answer for goods of the guest stolen from the room in which he slept. *Mitchell v. Woods*, 16 L. T. N. S. 676; *Morgan v. Ravey*, 6 H. & C. 265; 38 L. J. Ex. 131.

[2] By sect 2, 26 & 27 Vict. c. 41, if any innkeeper shall refuse to receive for safe custody any goods of his guest, or if any such guest shall, through any default of such innkeeper, be unable to deposit such goods as aforesaid, such innkeeper shall not be entitled to the benefit of the act in respect of such goods.

[3] Playing at cards for money on the licensed premises of an innkeeper is an offence against the tenor of his license, even though the playing was between himself and invited friends, and carried on in the private room of the innkeeper. *Patten v. Rhymer*, Q. B.; 3 Ell. & Ell. 1 A freeman of the Vinters' Company of London, selling foreign wines without license, was subjected by a local act to the same penalties as those licensed to sell. In his house one night a constable saw forty prostitutes, about half of them taking refreshments, and talking with men, and he told W. what they were. An hour afterwards some of the women were there with other prostitutes, only a few of them taking refreshments, and they were going out and coming in with men. There was no indecent or improper behaviour:—*Held*, there was evidence sufficient to sustain a conviction against W. for suffering persons of notoriously bad character to assemble, and meet together contrary to the license. *Whitfield v. Bainbridge*, 12 Jur. N. S. 919—Q. B.

[4] A man goes to an inn, with two race-horses and a groom, in the character of guest. They remain there for several months, taking the horses out every day for exercise and training, and being occasionally absent for several days together at races, but always with the intention of returning:—*Held*, that, in the absence of evidence of any alteration, the relation of innkeeper and guest must be presumed to continue, and the innkeeper's lien unaffected. *Allen v. Smith*, 12 C. B. N. S. 638; 9 Jur. N. S. 230. Affirmed on appeal, 9 Jur. N. S. 1284; 11 W. R. 440—Ex. Ch. The fact of the innkeeper's having claimed a lien for the whole time, was not such an excess of claim as to dispense with a tender of that which was really due. *Id.*

[5] The 11 & 12 Vic. c. 49, is not repealed by 18 & 19 Vic. c. 118, and it is, therefore, an offence to open a public-house on Sunday for the sale of beer therein to persons not being travellers, before half-past twelve o'clock in the afternoon. *Reg. v. Senior*, 1 L. & C. C. C. 401; 9 Cox. C. C. 469; 10 Jur. N. S. 547; 33 L. J. M. C. 125; 12 W. R. 749; 10 L. T. N. S. 428. On an information under 11 & 12 Vic. c. 49, s. 4, the burden of proving that a person is not a traveller is on the informer. *Taylor v. Humphreys* or *Humphries*, 10 Jur. N. S. 1153; 34 L. J. M. C. 1; 11 L. T. N. S. 376—C. P. A person is a traveller if he is out in the pursuit of health or pleasure, and if the publican has reason to believe, when he supplies refreshment, that he is

supplying a traveller, he ought not to be convicted. *Id.* A person who has taken a ticket for a journey by railway at the usual time before the starting of the train, is a traveller within the meaning of the 2 & 3 Vic. c. 47, s. 42. *Fisher v. Howard*, 11 L. T. N. S. 373. *Peache v. Colman*, 35 L. J. M. C. 118. A beerhouse situated in a hamlet maintaining her own poor, but included in a parish, the population of which, according to the last census, exceeds 2500, may, under section 15 of 3 & 4 Vic. c. 61, be kept open until 11 o'clock at night, although the population of the hamlet itself does not exceed 2500. *Smith v Redding*, 35 L. J. M. C. 202; 1 L. R. 489 Q. B. Where a licensed victualler has opened his house on Sunday within the prohibited hours for the *bonâ fide* supply of refreshment to travellers arriving at an adjacent railway station, the mere fact that refreshment has been supplied to persons residing within a mile of the house, and who did not come by the train, will not justify a conviction under the 11 & 12 Vic. c. 49, s. 1. *Peache v. Colman*, 1 Law Rep. C. P. 324; 12 Jur. N. S. 273; 1 H. & R. 393; 35 L. J. M. C. 118. Justices of a county, under 18 & 19 Vic. c. 118, have jurisdiction to hear an offence against a beer-retailer of Sunday trading during the prohibited hours, and it is not necessary to allege that they are justices acting in and for the petty sessional division. *Id.* Nor on the trial of the indictment to prove that an information was laid as the basis of the summons. *Reg. v. Shaw*, 10 Cox. C. C. 66; 11 Jur. N. S. 415; 12 L. T. N. S. 470.

[1] 27 & 28 Vic. c. 64, regulates the closing of refreshment-houses within the metropolitan police district, the city of London, corporate boroughs, and other places. As to victuallers and other occasional licenses, see 26 & 27 Vic. c. 33, s. 19; and additional license to sell beer by retail, *id.*; as to fairs and races, see 26 & 27 Vic. c. 33, s. 21, sect. 12 of the 25 & 26 Vic. c. 22. Races which have been advertised, and held in a private field, for admission to which a charge was made upon all persons, are "public races" within the meaning of this section. *Boughey v. Rowbottom*, Ex.; 15 W. R. 75. The exemption in 6 Geo. 4, c. 81, s. 11, in favour of persons duly licensed to sell beer, &c., and carrying on their trade in booths, tents, or other places, within the limits of any lawful fair or public races, relates only to the excisable penalties imposed by the act, and does not protect any person so selling beer, &c., from his liabilities under 35 Geo. 3, c. 113, s. 1, for selling beer without a magistrate's license. *Ash v. Lynn*, 35 L. J. M. C. 159. The justices are not warranted in adjudicating a forfeiture of the license without legal proof of a former conviction; a mere reference to the records of the petty sessions, where former convictions were entered, will not suffice. *Cross v. Watts*, 13 C. B. N. S. 239; 32 L. J. M. C. 73. Nor can the sessions refuse to renew a license to keep an inn, ale-house, and victualling-house, under 9 Geo. 4, c. 61, on the ground that the applicant declined to take out an excise license for the sale of spirits:—*Held*, that this was not a sufficient legal ground for such refusal. *Reg. v. Sylvester*, 3 B. & S. 322. Under 9 Geo. 4, c. 61, justices have no power to grant a license to sell exciseable liquors with the condition attached that they are not to be drunk or consumed on the premises, or to any other class of houses than inns, hotels, ale-houses and victualling-houses, wherein the liquors may be drunk or consumed upon the premises. *Reg. v. Wilkinson*, 10 L. T. N. S. 370—Q. B. A. was convicted by justices, under 3 & 4 Vic. c. 61, s. 6, of having obtained a license to retail beer by means of a certificate, the matters certified therein being false. The certificate stated that he was a person of good character. He was however proved to be living with a woman in a state of open concubinage, and had three illegitimate children by her:—*Held*, that he was improperly convicted; that the mere proof of such immorality did not constitute a person not to be "a person of good character." *Reg. v. Leader*, 16 C. B. N. S. 584; 10 Jur. N. S. 731; 33 L. J. C. P. 231; 12 W. R. 915; 10 L. T. N. S. 532. On the hearing of an information before two justices of the peace, preferred under 9 Geo. 4, c. 61, against a person licensed to sell exciseable liquors by retail, for that he did "unlawfully and knowingly permit and suffer persons of notoriously bad character to assemble and meet together in his house and premises:"—*Held*, that he was not a competent witness. *Parker v. Green*, 2 B. & S. 299. Licensed victuallers selling exciseable liquors at a public ball in the Metropolitan Police District between one and four in the morning must have an occasional license from the Commissioner of Police. *Hannant v. Foulger*, 36 L. J. M. C. 119; 2 L. R. Q. B. 399. On an information against a person licensed only to sell beer to be drunk off the premises, under 3 & 4 Vic. c. 61, s. 13, for selling beer to be consumed on the premises, it appeared that the beer was purchased through a window, and drunk by the purchaser partly while standing close to, and partly while sitting on, the window-sill:—*Held*, that this was not a drinking on the premises within 4 & 5 Will. 4, c. 85, s. 17. *Deal v. Schofield*, 16 W. R. 77; 17 L. T. N. S. 143; 3 L. R. Q. B. 8; 37 L. J. M. C.; 15 Q. B. By 23 & 24 Vic. c. 27, s. 32, every person licensed to keep a refreshment-house who shall knowingly suffer prostitutes, thieves, or drunken and disorderly persons to assemble at or continue in or upon his premises, is liable to a penalty recoverable before justices. Upon an information under this section, a metropolitan police magistrate convicted B., and, in a case, stated it

INQUIRY, Writ of.[1] 5 Abr. 162.

INQUISITIONS under the Lands Clauses Consolidation Act. *See post*, Lands Clauses Consolidation Act. 5 Abr. 310.

INSOLVENCY. *See* Bankruptcy; *post*, Stoppage *in transitu;* Vendor and Purchaser. *See* 32 & 33 Vic. c. 83.

INSPECTION and DISCOVERY.[2] 5 Abr. 167.

INSTRUMENTS to procure Abortion: Using or Procuring. 24 & 25 Vic. c. 100, s. 58. *See* 1 Abr. p. 55.

INSURANCE, Paying under a Decree.[3]

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was found that prostitutes assembled on the premises of B. in furtherance of prostitution. The Court upheld the conviction. *Belasco v. Hannant, Barton v. Hannant*, 3 B. & S. 13. It would be sufficient to warrant a conviction if the magistrate found that prostitutes assembled as such—Per Blackburn, J. *Id. Cole v. Coulton*, 2 El. & El. 695. *Wilson v Stuart*, or *Stewart*, 9 Jur. N. S. 1130; 32 L. J. M. C. 198.—Q. B. *Taylor v. Oram*, 1 H. & C. 370.

[1] A declaration contained three breaches, for arrears of sleeping rent due upon a mining lease, for not keeping the mine in repair, and for not properly working the mine. The defendant suffered judgment by default, and, upon the execution of a writ of inquiry, the jury gave the plaintiff 50*l.* damages on the first breach, but refused to find any damages on the second and third breaches:—*Held*, that the plaintiff was entitled to the expenses of witnesses called to prove those breaches, he being entitled as matter of law to nominal damages. *Dodd v Evans*, 15 C. B. N. S. 621.

[2] The provisions of the C. L. Procedure Act, 1854, are extended to the County Courts by Order in Council, 18 Nov. 1867. To found an application for the production of documents by a party to the action, the applicant must show by affidavit that there is some one document in the possession or power of the other side, to the inspection of which he is entitled. A mere affidavit of belief that such a document exists, and is in the party's possession or power, will not be sufficient. *See* 15 C. B. 809; 33 L. J. C. P. 21. *Evans v. Louis*, 1 L. R. C. P. 656. On behalf of a corporation it may be obtained on an affidavit made by the attorney of the corporate body. *Kingsford v. Great Western Railway*, 33 L. J. C. P. 307. The granting such an order is purely in the discretion of the judge, and the court will not review his exercise of such discretion. The object of the secresy clause contained in bank deeds is only to prevent vexatious attempts to pry improperly into the affairs of the concern, and wherever a proper case is made out, a court of equity will not hesitate to make an order for the inspection. *Birmingham Banking Company, In re*, 15 L. T. N. S. 203. R. B., a passenger on the railway of the defendants, received injuries in respect of which he claimed compensation. The defendants sent one of their clerks and their medical officer to see him, and reports were made to them by those persons. B. subsequently died, and his executors brought an action against the defendants for the benefit of his widow and children, alleging that the death resulted from the injuries which he received while he was such passenger:—*Held*, that the plaintiffs were entitled to inspection of the above-mentioned reports. *Baker v. The London and South Western Railway Company*, 37 L J. Q. B. 53. *See* 38 L. J. C. P. 317. In an action for breach of promise of marriage, to which the defence is a simple denial of the promise, the court will on motion of the plaintiff direct an inspection and interchange of copies of the letters which have passed between the parties. *Stowe v. Strange*, 34 L. J. Ex. 72. *Chute v. Bennehassel*, 16 Ir. C. L. R., C. P. 108.

A defendant, in his affidavit as to documents, claimed protection for them on the ground that they were cases and opinions taken in reference to adverse proceedings similar to the present suit, and in contemplation of future possible suits. An affidavit by plaintiff to show that the cases and opinions were not confidential, as they had been printed and circulated among many persons, was refused to be admitted, and the documents held privileged. *Underwood v. Secretary of State for India*, 35 L. J. 545. Reports made in the discharge of the duties of their respective offices by government officials to the crown, or its representatives, are state documents, and their production connot be enforced in a court of law. *M'Elveney v. Connellan*, 17 Ir. Com. Law Rep. 55—Ex. As to practice of bringing into registry, *see the Macgregor Laird*, 36 J. Ad. 10. The s. 58 of 17 & 18 Vic. c. 9, gives, as ancillary to the power to order inspection, the same power to order the removal of obstruction, with a view to inspection, which is exercised by the courts of equity as ancillary to their power of ordering inspection. *Bennett v. Griffiths*, 3 E. & E. 467.

[3] An insurance company paying money

INSURANCE against Accidents[1] and of Plate Glass.[2] 1 Abr. 86.

INSURANCE COMPANIES.[3]

under a decree of the court upon a policy which has been lost, is not entitled to any further indemnity. *England v. Lord Tredegar*, 35 L. J. 386, Ch.; 1 L. R. Eq. 344.

[1] By one of the conditions of a policy against accidental death or injury, it was provided that the policy insured against cuts, stabs, concussions, &c., "when accidentally occurring from external cause;" "but it does not insure against death or disability arising from hernia or any other disease or cause arising within the system before, or at the time, or following such accidental injury. Death from hernia caused solely and directly by external violence, followed by a surgical operation performed for the purpose of relieving the patient, is not within the exception. *Fitton v. Accidental Death Insurance Company*, 17 C. B. N. S. 122; 34 L. J. C. P. 28. In an action on a policy of assurance against loss of life and personal injury arising from "any accident whatsoever," *Held*, that death from a sun-stroke was not an "accident" within the meaning of the policy. *Sinclair v. Maritime Passengers' Assurance Company*, 3 Ell. & Ell. 478; 30 L. J. Q. B. 77. Evidence must be adduced of the accidental death, and that such death was a death by an injury insured against. *Trew v. Passengers' Insurance Company*, 30 L. J. Ex. 317; 6 H. & N. 837. As to the amount for which judgment may be signed, *see* 11 Jur. 265; 11 L. T. 595. A company, by its form of proposal for insurance against accidents, required the "name, residence, profession or occupation of the person whose life is proposed to be insured," to be stated. P. filled up this form thus: "J. T. P. Esq., Saltley Hall, Warwickshire." He lived at Saltley Hall, but he also kept an ironmonger's shop at D., in the same county. In the policy was a proviso "that if any statement in the proposal be untrue, or if the policy has been obtained through any misrepresentation, concealment, or untrue averment, then the policy shall be void:"—*Held*, not rendered void by the omission to state that he was an ironmonger. *Perrins v. Marine and General Travellers' Insurance Society*, 2 El. & El. 317.

[2] The defendants insured certain plate-glass windows "against loss or damage, originating from any cause except fire, breakage during removal, alteration or repair of premises." A fire occurred in an adjoining house, which was distant twenty-five yards from the window; the back part of the premises having taken fire, the insured called in some neighbours to remove the furniture, &c.; in the meantime a crowd collected, who tore down the front shutters and broke the plate glass for the purpose of pilfering the goods in the shop window:—*Held*, the defendants were liable, the loss not coming within the excepted risk. *Marsden v. City and County Assurance Company*, C. P. 35 L. J. 60. The insurance was effected through L., an agent of the company in the country. Before the fire, the company transferred their plate-glass business, with all liabilities, to another company, and L. then ceased to be agent of the company. The insured, who knew nothing of the transfer, gave notice of the fire to L., who communicated it to the new company in London:—*Held*, that this was a sufficient compliance with the condition, that notice should be given to the manager, or some known agent of the company. *Id.* The stamp, by 28 & 29 Vic. c. 96, s. 10, on a policy against any accident, the premium or consideration not exceeding 2*s.* 6*d.*, 1*d.*; exceeding 2*s.* 6*d.* and not exceeding 5*s.*, 3*d.*; exceeding 5*s.* then for every 5*s.*, and fractional part of 5*s.*, 3*d.*

[3] An insurance company registered under 7 & 8 Vic. c. 110, which professed to be established for the following purposes: "The granting of policies of insurance upon lives or survivorships, the granting of endowments to children and adults, the granting of annuities to commence either immediately or prospectively, and to continue either for a definite time or until death; the assurance to persons of both sexes a weekly sum or payment during sickness, and to married women a certain weekly sum during the period of accouchement, either with or without medical attendance and medicine; and the granting loans and making advances upon personal or other security, so as the interest made payable upon any such loan or advance shall not exceed 7½ per cent; and the doing of all acts incident thereto," was not disqualified, by reason of the enactments contained in sects. 27 & 28 of the 20 & 21 Vic. c. 14, from suing either at law or in equity, unless registered under the 19 & 20 Vic. c. 47, and 20 & 21 Vic. c. 14. *London and Provincial Provident Society v. Ashton*, 12 C. B. N. S. 709, 723. An insurance company expressly excepted from their fire policies loss by explosion, except by the explosion of gas. An explosion occurred accidentally. The directors paid for the damage so caused, but they did it *ex gratiâ*, and for the benefit of the company:—*Held*, that this was a matter of internal management, and were justified in making the payments, the damage being done by something which, though not within, was analogous to, the risk insured against. *Taunton v. Royal Insurance Company*, 2 H. & M. 135; 10 Jur. N. S. 291; 33 L. J. Chanc. 406; 12 W. R. 549; 10 L. T. N. S. 156. Where the deed of settlement of the company limited the liability of the shareholders in proportion to their interest in the funds of the company:—*Held*, that the shareholders, who are also creditors of the company, were entitled to be paid in full. *In re Professional Life Assurance Company*, 36 L. J. Chanc. 442; 3 L.

INSURANCE of Cattle.[1]

INSURANCE, Fire. 5 Abr. 174. Covenant to Insure. 3 Abr. p. 472.

(A) *Nature, Qualities, and Construction of Policy*, p. 250.

(B) *Misrepresentation or Concealment*, p. 250.

(C) *Assignment of Policy—Money Insured, to whom payable, and how applied*, p. 251.

(D) *Relief from Forfeiture for not insuring; as to Duty payable on, see* 28 & 29 Vic. c. 18.

(A) *Nature, Qualities, and Construction of Policy.*[2]

(B) *Misrepresentation or Concealment.*[3]

R. Eq. 668. A policy-holder, by whose policy the funds of a company were made liable to pay the sum insured, and certain shares of the profit by way of bonus:—*Held*, entitled to an injunction to restrain the company from transferring its business and assets to another company contrary to the provisions of the deed of settlement, and without making provision out of its own assets for payment of the policy. *Kearns v. Leaf—Aldebert v. Kearns*, 1 H. & M. 681; 10 L. T. N. S. 185. *Era Assurance Company, In re, Williams's Case, Anchor Case*, 1 H. & M. 672. *British Provident Life and Fire Assurance Society, In re, Ex parte Webster*, 12 W. R. 677; 10 L. T. N. S. 288, V. C. K. *Re Waterloo Life Assurance*, 33 Bea. 542. As to construction of rules of mutual insurance associations, *see Redway v. Sweeting*, 36 L. J. Ex. 185.

[1] By 29 & 30 Vic. c. 34, s. 1, notwithstanding anything in the 18 & 19 Vic. c. 63, entitled "An Act to consolidate and amend the Law relating to Friendly Societies," a society may be established under the provisions of the said act for the assurance to any amount against loss by death of neat cattle, sheep, lambs, swine, and horses, from disease or otherwise; and neither the provisions in sect. 9, that no member shall subscribe or contract for a sum payable on death or any other contingency exceeding 200*l.*, nor sect. 38, shall apply to any such society so established, or which may hereafter (11th June, 1866) be so established, for such purpose. By sect. 2, all contributions and other payments payable by any member in respect of any assurance effected by him, shall be considered as a debt due by him to the society, and shall be recoverable as such in the county court of the district within which the usual or principal place of business of the society is situate.

[2] A fire insurance company, in making out a policy of insurance of a steam ship, referring to conditions endorsed, so far as applicable, used one of their printed forms of conditions applicable to houses, the language being, "if more than twenty pounds of gunpowder be on the premises at the time of the loss, such loss will not be made good:"—*Held*, the word "premises" equally applied to a ship, the word being in legal language often used to denote "the subject or thing previously expressed." *Beacon Life A. C. v. Gibb*, 1 Moore, P. C. C. N. S. 73; 9 Jur. N. S. 185; 7 L. T. N. S. 574:—*Held*, also, that parol evidence was not admissible to prove that the word premises was not intended to include the steamer. *Id. Held*, also, that one of the conditions having specified a limited quantity of gunpowder to be carried on board, it was quite immaterial whether the fire was or was not occasioned by more than the specified quantity of gunpowder being on board. *Id.* Policy of insurance "from loss or damage by fire:"—*Held*, that damage to the insured premises by the explosion at a distance of a large quantity of gunpowder, the damage arising from concussion merely, was not covered by the policy. *Everett v. The London Assurance Company*, 19 C. B. 126; 11 Jur. N. S. 546: 34 L. J. C. P. 299. By "explosion of gas," in fire policy, gas must be taken in its common sense, as meaning gas applied to illuminating purposes, and not to vapour produced in the course of manufacture. *Stanley v. Western Insurance Company*, 2 L. J. N. 419; 3 L. R. Ex. 71; 17 L. T. 513. The 14 Geo. 3, c. 78, s. 83, by which insurance offices are authorised, upon the request of any persons entitled to any buildings which may be damaged by fire, to cause the insurance money to be laid out in rebuilding, is a general enactment, and is not limited in its operation to the metropolitan district. *Gorely, Ex parte, In re Barker*, 34 L. J. Bank. 1; 10 Jur. N. S. 1085, C. Trade fixtures put up by a tenant, being removable by him, are not comprised in the expression "houses or other buildings" in the statute. *Id.*

[3] Wilful misrepresentation of the value of the property destroyed will, under the

(C) *Assignment of Policy and Money Insured, to whom payable, and how applied.*[1]

(D) *Relief from Forfeiture for not insuring.*[2]

INSURANCE, Life. 5 Abr. 176.

(A) *Nature of Contract, and Construction of Policy*, p. 251.

(B) *The Party Assured must have an Interest in the Life*, p. 251 ; *and the Policy must state Name of Party interested*, 38 L. J. Q. B. 293.

(C) *Misrepresentation or Concealment*, p. 252.

(D) *Assignment and Payment of Policy*, p. 252.

(E) *Of Forfeiture of the Policy*, p. 252.

(*a*) *Action and Proceedings on Policy, and Liability on Covenant to Insure*, p. 252.

(A) *Nature of Contract, and Construction of Policy.*[3]

(B) *The Party Assured must have an Interest in the Life.*[4]

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usual conditions against fraudulent claims, defeat and vitiate the whole claim. *Britton v. Royal Insurance Company*, 4 F. & F. 905; 15 L. T. N. S. 872. Although the defence set up by the company is that of fraudulent misrepresentation of value, together with that of arson, these are independent defences, and it is competent to the jury to consider only the defence of a fraudulent claim. *Id.*

[1] Where a fire policy has been assigned, the insurers, in the absence of an express contract to do so, are not bound upon the application of the assignee to pay him upon the policy. *London Investment Company v. Montefiore*, 9 L. T. N. S. 688. Q. B. A purchaser of property insured against fire does not, by the mere fact of purchase, acquire a right to the insurance moneys. *Poole v. Adams*, 33 L. J. Ch. 639 ; 10 L. T. N. S. 287. But the assignees of a bankrupt are entitled to the money. *In re Banks*, 10 L. T. N. S. 697. In order to entitle an owner to the benefit of sect. 83 of the 14 Geo. 3, c. 78, he must make a distinct request to the insurance office to apply the policy-money in rebuilding before they have settled with the tenant insuring; and in no case is the owner entitled to rebuild himself and claim the policy-money. *Simpson v. Scottish Union In. C.* 1 H. & M. 618. *See* 9 Jur. N. S. 711; 32 L. J. C. 329. A policy excluding personal liability does not give jurisdiction to a court of equity to interfere in the first instance to enforce the 83rd section, and that the proper course is first to apply for a mandamus. *Id.* The operation of sect. 83 of the 14 Geo. 3, c. 78, is not limited to the metropolitan district. *Gorley, ex parte Barker*, 10 Jur. N. S. 1085; 11 L. T. N. S. 319; 34 L. J. Bank. 1. Trade fixtures put up by a tenant, removable by him, are not within the words "houses or other buildings" mentioned in this section. *Id.* A tenant from year to year of house destroyed by fire is not limited in his claim on the premises to the extent of his interest in the property insured. *Simpson v. Scottish Ins. Office*, 32 L. J. Ch. 329. The defendants assigned machinery by bill of sale to secure a sum of money advanced by the plaintiff. The deed contained a covenant to insure, but no provision for the application of the policy-moneys in case of fire, in liquidation of the mortgage debt. The machinery was burnt, and the defendants became bankrupts:—*Held*, that the plaintiff had no claim to the benefit of the policy as against the defendants. *Lees v. Whiteley*, 2 L. R. Eq. 143; 35 L. J. Chanc. 412; 14 W. R. 534; 14 L. T. N. S. 472.

[2] Insurance relief from forfeiture by court of equity, *see* 22 & 23 Vic. c. 35, s. 4.

[3] Where premiums are payable quarterly, the policy becomes void on non-payment of any quarterly premium; the payment of all the quarterly instalments being a condition precedent to the continuance of the policy for the current year. *The Phœnix Insurance Company v. Sheridan*, H. L. 8; H. L. C. 745; 31 L. J. Q. B. 91. There is no principle of public policy upon which a life assurance is void by suicide of the assured while in a state of insanity. *Horn v. Anglo-Australian Insurance Company*, 30 L. J. Ch. 511. *See Solicitors' Life Insurance Co. v. Lamb*, 2 De Gex & S. 251.

[4] A promise by a creditor to a debtor that payment of the debt shall not be enforced during his (the creditor's) lifetime, is not sufficient (without any consideration or circumstance to make such promise binding) to confer upon the debtor an insurable interest in the life of the creditor, within sect. 1 of 14 Geo. 3, c. 48. *Hebden v. West*, 3 B. & S. 579; 9 Jur. N. S. 747; 32 L. J. Q. B. 85; L. T. N. S. 854. A contract between a master and servant for seven

(C) *Misrepresentation or Concealment.*[1]

(D) *Assignment and Payment of Policy.*[2]

(E) *Of Forfeiture of the Policy.*[3]

(*a*) *Actions and Proceedings on Policy, and Liability on Covenant to Insure.*[4]

INSURANCE, Marine. 5 Abr. 179.

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II. What Property and Interest may be Insured, and of Covenants to keep Insured, p. 253.

III. Form and Requisites of the Policy, and when Revocable, p. 254.

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years' service, at a fixed salary, is sufficient to create such an interest, but to the extent only of so much of the period of seven years as remained at the time of the effecting of the policy. *Id.* Where a person, having an insurable interest in the life of another, insured such life to the full extent of his interest in more than one company, from one of which, at the falling of the life insured, he received payment of the amount for which the policy was effected:—*Held*, that he was precluded by the terms of sect. 3 of 14 Geo. 3, c. 48, from recovering or receiving more from the others. *Id.* 29 & 30 Vic. c. 42, extends 14 Geo. 3, c. 48, to Ireland.

[1] A. effected a policy on his life, which, after stating that the written particulars are correct and true throughout, "and I hereby agree that this proposal shall be the basis of the contract between me and the M. and L. Life Assurance Association. And if it shall hereafter appear that any fraudulent concealment or designedly untrue statement be contained therein, then any money which shall have been paid on account of the insurance shall be forfeited, and the policy be null and void:"—*Held*, that the word "untrue" meant any statement that was wilfully and designedly untrue; and that the policy was not vitiated by a representation *bonâ fide* made, but which might prove to be untrue. *Fowkes v. Manchester and London Life Assurance Association*, 31 L. J. Q. B.; 8 L. T. N. S. 309; 3 B. & S. 917.

[2] When a policy of assurance is assigned to a trustee who, either by express terms or by fair construction, has a power to give receipts, the company ought not to refuse payment to the trustee. *Curtin v. Jellicoe*, 13 Ir. Chanc. Rep. 180. A bequest of a policy of insurance carries with it the bonuses which have accrued. *Roberts v. Edwards*, 9 Jur. N. S. 1219; 9 L. T. N. S. 360, R. It may be the subject of a *donatio mortis causa*. *Witt v. Amyss*, 30 L. J. Q. B. 318; 1 B. & S. 109. A. delivered to B. a policy of insurance on his own life, to secure a loan from B., with the intention of giving B. an interest in the sum insured. No notice of the transaction was given to the insurance office:—*Held*, that the policy remained in the order and disposition of A., and that, on his bankruptcy, his assignee was entitled to recover it from B. *Green v. Ingham*, 2 L. R. C. P. 525; 36 L. J. C. P. 236; 15 W. R. 641; 16 L. T. N. S. 455. *In re Webb*, 15 W. R. 529; 16 L. T. N. S. 89; 36 L. J. Chanc. 341.

[3] A debtor having assigned to his creditors a policy on his own life, and covenanted to pay the annual premiums, and not to do anything by which the policy should be forfeited, caused a forfeiture of it by going beyond the limits of Europe without the license of the assurers, contrary to a condition in the policy:—*Held*, that the measure of damages for such a breach of covenant was the present value of the policy at the time of forfeiture, and taking it as if he would have paid the annual premiums. *Hawkins v. Coulthurst*, 10 Jur. N. S. 876; 33 L. J. Q. B. 192; 12 W. R. 825.

[4] In an action on a life policy, the company pleaded that the assured had symptoms of stomach disease at the time of effecting the policy, whereby the policy was avoided. —The company was ordered to give particulars of the symptoms. *Marshall v. Emperor Life Assurance Society*, 13 L. T. N. S. 281, Q. B.; 12 Jur. 293. Where adverse claims are made to moneys payable under a policy of insurance, the company may pay the money into court under the Trustee Relief Act. *United Kingdom Life Insurance Company, In re*, 11 Jur. N. S. 424; 13 W. R. 645; 12 L. T. N. S. 441, R. A. borrowed money of B., and executed a deed of assignment, by way of mortgage, to B., of a policy of insurance on his own life, with a covenant to keep up the annual payments for premiums:—*Held*, that this was not a liability to pay money upon a contingency provable under 12 & 13 Vic. c. 106, s. 178. *Metcalfe v. Hanson*, 1 L. R., H. L. 242; 35 L. J. Q. B. 225.

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I. Who may be Insurers and Insure, and Insurance Companies.[1]

II. What Property and Interest may be Insured, and of Covenants to keep Insured.[2]

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[1] An association formed of a number of persons for the mutual insurance of their ships against loss, and for mutual contribution, in the event of such loss, is not an illegal association, within 35 Geo. 3, c. 63, s. 11, although no policies are issued by such association. *Bromley v. Williams*, 9 Jur. N. S. 240; 32 L. J. Chanc. 716; 11 W. R. 392; 8 L. T. N. S. 78, R. An insurance on a ship with an association by one of its members executing the deed of settlement in conformity with the rules, but not obtaining a policy:—*Held*, that his remedy against the association for the amount due upon the insurance was not by action, but by a bill in equity, to obtain a declaration of his right to specific performance of the engagement by the committee to pay. *Harvey v. Beckwith*, 12 W. R. 819. Affirmed on appeal, 12 W. R. 896; 10 L. T. N. S. 32:—*Semble*, an insurable interest may exist, though the property in the goods has not absolutely passed to the individual. *Joyce v. Swann*, 17 C. B. N. S. 84.

[2] Although the fact that a broker or factor is named as shipper and consignee of goods in the bill of lading is *primâ facie* evidence that he has an insurable interest, yet this presumption is rebutted by showing that the nominal shipper and consignee was a mere agent, having no lien upon the goods, and not having the possession as baillee, and not being liable to account for the loss by the perils insured against. *Seagrave v. The Union Marine Insurance Company*, 1 L. R. C. P. 305; 35 L. J. 172. The plaintiff having brought an action against the defendants for the recovery of a

III. Form and Requisites of the Policy, and when Revocable.[1]

IV. Legality or Illegality of Contract.[2]

V. Of Valued and Open Policies.[3]

debt, it was agreed between the parties that proceedings should be stayed and no judgment signed, upon the terms that the defendants should execute to the plaintiff a mortgage of the ship for the amount of his debt, and keep the same insured. On the day before the expiration of the then existing policy, slips of policies were signed by the underwriters, but the new policies themselves were not completed until three days after the expiration of the old ones:—*Held*, that this was a non-compliance on the part of the defendants of their undertaking to keep insured, and that the plaintiff was therefore entitled to sign judgment. *Parry v. Great Ship Company*, 4 B. & S. 556; 10 Jur. N. S. 294; 33 L. J. Q. B. 41.

[1] The memorandum, or slip, which, by the custom of Lloyd's, is given by underwriters prior to the grant of a policy, will not be enforced in equity as a contract to grant a policy. *Morocco Land and Trading Company (Limited) v. Fry*, 11 Jur. N. S. 76; 13 W. R. 310; 11 L. T. N. S. 618,—V. C. S. A policy executed is irrevocable, though it remains in the custody of insurer. *Xenos v. Wickham*, 36 L. J. C. P. H. L.; 3 B. L. & L. 296; 10 Jur. 339; 14 C. B. 135: unless there is some particular act required to be done by the other party to declare his adoption of it. *Id.*

[2] Declaration on a policy on goods from London to Matamoras, alleging a loss in the course of the voyage by peril insured against. A plea, that the goods were contraband of war, and were shipped for the purpose of being sent to and imported into a port in a state engaged in hostilities, and were liable to be seized by the cruisers of a state at war with that state as contraband of war; and that the ship was carrying goods and papers which rendered her liable to seizure by such cruisers, and that the ship and goods were seized accordingly; which is the loss complained of; of all which the defendant, at the time of subscribing the policy, was wholly ignorant:—*Held*, that the plea was no defence to the action; that the plea did not deny that the goods were sent from a neutral port to a neutral port in a neutral ship; that the allegation that the ultimate destination of the goods was an enemy's port was an allegation of a mental process only; and that the allegation that the ship was carrying goods and papers which made her liable to seizure, was immaterial, it not being alleged that the goods were the plaintiff's goods, or that the plaintiff was in any way responsible for the ship's papers. *Hobbs v. Henning, or Heming*, 17 C. B. N. S. 791; 11 Jur. N. S. 223; 34 L. J. C. P. 117; 13 W. R. 431; 12 L. T. N. S. 205. An act in contravention of law, committed by the mate's orders, with the express authority, knowledge, or sanction of the owners, will not prevent his recovery in the insurance. *Wilson v. Rankin*, 35 L. J. Q. B. 87; see *Cunard v. Hyde*, 2 E. & E. 1. Action on policy of insurance on ship and freight. Plea, exemption from liability by reason of infringement of this statute in placing cargo on deck. It appeared that all cargo on freight was below deck, but that the master, for the owner's use, but without his knowledge, placed some superfluous spars on deck:—*Held*, first, these spars were "cargo." To avoid the policy it is necessary to show knowledge by the assured of the illegal act:—*Held*, secondly, that such knowledge could not be implied from the master, being the agent of the owner, for stowing the cargo. Authority to do an illegal act cannot be implied. *Wilson v. Rankin*, Q. B. 122; N. S. 20, affirmed. 14 W. R. N. S. 60; 34 L. J. N. S. 62.

[3] The valuation of a vessel in a valued policy cannot be opened because it greatly exceeds the real value, if there be no fraud or mistake in the meaning of the parties when the valuation was stated in the policy. See *Bruce v. Jones*, 32 L. J. Ex. 132; 1 H. & C. 749; 37 L. J. C. P. 108. A policy was effected upon freight, to "be valued as under." The policy was in the usual form, containing the common memorandum, which was immediately followed by the words, "on freight, warranted free of capture, seizure, piracy, detention, or the consequences of any attempt thereat." In the margin, nearly opposite, but a little above these words, the sum of 1300*l.* was written in figures:—*Held*, that this was not a valued policy. *Wilson v. Nelson*, 5 B. & S. 354; 33 L. J. Q. B. 220. A policy for twelve months contained the following proviso: "That outward cargo should be considered homeward interest twenty-four hours after arrival at first port or place of trade;" and the policy was stated to be upon "ship valued at 2030*l.*, cargo 8000*l.*, with liberty to increase homeward cargo: and there was power by the policy to vary the cargo. The ship sailed for the coast of Africa; and at Kinsembo discharged one-third of the cargo, and after remaining there twenty-four hours, proceeded on her voyage, in order to ship homeward cargo, and whilst so doing was totally lost:—*Held*, that the insurers were not liable to pay the whole sum of 8000*l.* for the cargo, this being the valuation of a complete cargo. *Tobin v. Harford*, 10 Jur. N. S. 850; 10 L. T. N. S. 817,—Ex. Ch.; 32 L. J. C. P. 134; 13 C. B. 791. As to evidence of the weight of a particular cargo

VI. Of the Construction of the Policy.[1]

VII. Of the Inception and Termination of the Risk.[2]

offered by the assured, and acceptance of that weight by the underwriter, *see Sill v. Swann*, 8 L. T. N. S. 699,—Exch.

[1] Policies of insurance are to be constructed according to the same rules as all other written contracts, namely, by ascertaining the intention of the parties, to be gathered, in the first instance, from the words of the instrument, but interpreted, if necessary, by the surrounding circumstances. *Carr v. Montefiore*, 5 B. & S. 408,—Ex. Ch. An insurance is to afford protection against contingencies and damages which may or may not occur, it does not apply to a loss or injury that must inevitably take place in the ordinary course of things. *Paterson v. Harris*, 32 L. J. Q. B. 354; 1 B. & S. 336. A policy contained a clause, that in case the vessel should, by accident or negligence of the master or crew, run down or damage any other ship or vessel, and the insured should thereby become liable to pay, and should pay, as damages, any sum not exceeding the value of the vessel, he, the insurer, would bear and pay his proportion. The ship insured, by the negligence of her master, ran down and sank another vessel, thereby causing the death of divers of her crew, to whose personal representatives the assured were compelled by law to pay damages:—*Held*, that the amount of such damages was not recoverable from the underwriter. *Taylor v. Dewar*, 33 L. J. Q. B. 141; see *Xenos v. Fox*, 37 L. J. C. P. 294. *Aubert v. Gray*, 32 L. J. Q. B. 50. *Hobbs v. Henning*, 34 *id.* C. P. 117. A cargo of bacon was insured from Liverpool to New York by a policy containing the exception "warranted free from average, unless general, or the ship be stranded, sunk, or burnt," and a suing and labouring clause in its ordinary form. The ship in the course of its voyage was disabled, and the cargo discharged. Part of the bacon was condemned and sold, and the remainder sent on in two vessels; all of which was proper under the circumstances:—*Held*, that neither the extra freight incurred by reason of the transhipment, nor the cost of warehousing, surveying, and cooperage of the goods, could be recovered under the policy. *Booth v. Gair*, 15 C. B. N. S. 291; 33 L. J. C. P. 99.

[2] It is not a condition precedent to the attaching of a policy on goods against sea risks, that the subject of insurance should, at the commencement of the voyage, be fit to encounter the ordinary vicissitudes of a voyage. *Koebel v. Saunders*, 17 C. B. N. S. 71: 10 Jur. N. S. 920; 33 L. J. C. P. 310. On a homeward policy of insurance on ship, "at and from" a foreign port, the risk attaches on the first arrival at that port, when once in good safety, although the ship may not have been moored at the place of discharge. The outward policy (if any) is not to enter into the construction of the homeward one, the consequences of which is that the two policies may overlap considerably. *Haughton v. The Empire Mar. Ins. Co.* 1 L. R. Ex. 206; 35 L. J. 117; 4 H. & C. 44; see *Barber v. Fleming*, 4 L. J. N. C. 247. By a policy a ship was insured from Liverpool to any port in the Pacific Ocean, "and during thirty days' stay in her last port of discharge." In another part of the policy there was the usual printed clause, by which she was to be insured "until she hath moored at anchor twenty-four hours in good safety." She arrived at M., her port of discharge, at 7 p.m. on the 25th of May, and anchored there, and at 3.45 a.m. on the 24th of June she was driven ashore and lost:—*Held*, that the loss was covered by the policy, as the thirty days had not expired when she was so lost. *Mercantile Marine Insurance Company v. Titherington*, 34 L. J. Q. B. 11; 13 W. R. 141; 11 L. T. N. S. 340. *Gledstanes v. Royal Exchange Insurance Company*, 13 W. R. 71; 11 L. T. N. S. 305,—Q. B. See *Carr v. Montefiore*, 10 Jur. N. S. 312; 33 L. J. Q. B. 57: 10 L. T. N. S. 294. Affirmed on appeal, 10 Jur. N. S. 1069; 33 L. J. Q. B. 256; 5 B. & S. 408, Ex. Ch. Where a vessel is insured "at and from" a foreign port at which she is expected to arrive, the risk attaches when she first arrives at that port in such a seaworthy condition as to be enabled to lie there in safety. *Haughton v. The Empire Marine Insurance Company*, 4 H. & C. 44; 1 Law Rep. Ex. 206, 12 Jur. N. S. 376; 15 L. T. N. S. 80. A time policy of insurance is not prevented from attaching by there having been a constructive total loss of the vessel before commencement of the risk insured. *Barker v. Janson*, 37 L. J. C. P. A policy was effected on guano, "at and from port or ports in the River Plate to the United Kingdom," &c., "beginning the adventure from the loading thereof aboard the said ship at as above." The guano had been loaded on board at Patagonia before the ship went to the River Plate. When she arrived at Monte Video, a portion of the guano was taken out, to allow of a leak being got at, and of the necessary repairs. The guano so taken out was then replaced in the vessel, and the ship sailed from Monte Video for England with the guano on board. Before the policy was effected the underwriter was informed that the guano had been loaded in Patagonia and taken to Monte Video in the vessel, and that the vessel had sailed from Monte Video for England. A loss occurring on the voyage, the question was whether the policy ever attached on the guano: *Held*, that there was a sufficient constructive loading of the cargo at Monte Video to satisfy the terms of the policy. *Carr v. Montefiore* Ex. Ch. 33 Law J. Rep. N. S. Q. B. 256; 5 B & S. 425.

VIII. Risks and Perils Insured against.

(A) *Perils of the Sea.*[1]
(B) *Loss by Capture.*[2]
(C) *Jettison.*[3]
(D) *By Arrest, Confiscation; and Detention of Princes and People*[4]
(E) *By Fire.*[5]

IX. Of Warranties.[6]

(A) *Their General Effect.*

[1] Where goods are, in consequence of the perils insured against, lying at a place different from their destination, damaged, but in such a state that they can at some cost be put in such a state that they may be carried to their destination, the question to be determined is, whether it is practically possible to carry them on, that is, whether to do so will cost more than they are worth; and that in determining this there must be taken into account all the extra expenses consequent on the perils of the sea, such as drying, landing, warehousing, and reshipping the goods; but there must not be taken into account the fact, that if they are carried on in the original bottom, or by the original shipowner in a substituted bottom, they will have to pay the freight originally contracted to be paid, that being a charge to which the goods are liable when delivered, whether the perils of the sea affect them or not. *Farnworth v. Hyde*, 1 H. & R. 433; 12 Jur. N. S. 997; 35 L. J. C. P. 250; 15 L. T. N. S. 395,—Ex. Ch. Negligence of crew is a loss by such perils, 38 L. J. C. P. 73.

[2] A policy was effected on a Prussian ship against such risks only as were excluded by the clause, "warranted free from capture, seizure, and detention, or the consequences of any attempt thereof," with a stipulation that the insurers should pay a total loss thirty days after the receipt of official news of capture or embargo, without waiting for condemnation. The ship was detained by an embargo in a Danish port, after the breaking out of hostilities between that power and Germany:—*Held*, that the right of the assured to claim for a total loss became vested on the expiration of the thirty days, notwithstanding that the vessel had never been actually taken out of the possession of the captain, and was afterwards (and after action) restored, and arrived safely in London. *Fowler v. English and Scottish Marine Insurance Company*, 18 C. B. N. S. 919; 11 Jur. N. S. 411; 34 L. J. C. P. 253; 13 W. R. 658; 12 L. T. N. S. 381.

[3] A custom or usage of trade at Liverpool that the underwriters, on a policy effected there in the ordinary form, are not liable for general average with respect to the jettison of goods stowed on deck, is a good custom, and may be incorporated into a policy so as to limit the liability of the underwriters, and to be pleaded in answer to an action on the policy, notwithstanding that, by the terms of the policy, the underwriters agreed to insure against the perils of jettison. *Miller v. Titherington*, 9 L. T. N. S. 231, Ex. Ch.

[4] The clause in a policy of marine insurance on a ship and goods which insures against losses occasioned by "arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever," applies to a seizure of the ship in consequence of an embargo laid on her by the sovereign of the country of the assured, for the purpose of carrying on war with another power. *Aubert v. Gray*, 3 B. & S. 163; 9 Jur. N. S. 714; 32 L. J. Q. B. 50. See *Ionides v. Universal Marine Insurance Company*, 10 Jur. N. S. 18; 32 L. J. C. P. 170. The rights which the laws of war give to a belligerent for his protection do not involve as a consequence that the act of the neutral in transporting munitions of war to the other belligerent is either a personal offence against the belligerent captor, or an act which gives him any ground of complaint against either the neutral trader, or the government of which he is a subject. *Chavasse, ex parte, in re Gazebrook*, 11 Jur. N. S. 406; 34 L. J. Bank. 17; 13 W. R. 627; 12 L. T. N. S. 249,—C. Carrying simulated papers alone is not a breach of neutrality, so as to work a forfeiture of the ship carrying them, but is only evidence from which a cause of forfeiture may be inferred. *Hobbs v. Henning, or Heming*, 17 C. B. N. S. 791; 11 Jur. N. S. 223; 34 L. J. C. P. 117; 13 W. R. 431; 12 L. T. N. S. 205. It is not a municipal offence by the law of nations for a neutral to carry on trade with a blockaded port. *The Helen*, 11 Jur. N. S. 1025; 14 W. R. 136,—Adm.

[5] A policy of insurance against fire was effected on a ship. The policy contained a proviso to the effect that it and the insurance thereby made should be subject to the several conditions and regulations thereto and thereon expressed, so far as the same were or should be applicable. One of these conditions (all of which were primarily intended to apply to the insurance of houses and buildings, and were in the form used for that purpose) provided, that if more than twenty pounds weight of gunpowder should be "on the premises" at the time when any loss happened, such loss would not be made good:—*Held*, that the proviso was, under the circumstances, applicable to the ship insured. *Beacon Life and Fire Assurance Company v. Gibb*, 1 Moore P. C. C. N. S. 73; 9 Jur. N. S. 185; 7 L. T. N. S 574. *Pearson v. Commercial Union Assurance Company*, 12 W. R. 251; 9 L. T. N. S. 442,—C. P.

[6] In policies of insurance and charter-parties, the word warranty is synonymous

(B) *Of Seaworthiness.*[1]

X. Representations and Concealment.[2]

XI. Of Total or Partial Loss.[3]

XII. Of Abandonment.[4]

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with condition. *Behn v. Burness*, 3 B. & S. 751,—Exch. Cham. Affirming judgment of the Queen's Bench, 3 B. & S. 669; 10 Jur. N. S. 92.

[1] The seaworthiness, of which, in the absence of express stipulations, there is an implied warranty in every voyage policy, is a relative term, depending on the nature of the ship as well as of the voyage insured for; and in an action on a policy, parol evidence as to these facts is admissible to show the amount of seaworthiness implied. *Burges v. Wickham*, 33 L. J. Q. B. 17; 8 L. T. N. S. 47. *Clapham v. Langton*, 12 W. R. 1011; 10 L. T. N. S. 875,—Exch. Cham. *Biccard v. Shepherd*, 14 Moore P. C. C. *Clapham v. Langton*, 3 F. & F. 626. The doctrine of implied warranty of the seaworthiness of the ship, in a policy of insurance on cargo, does not extend to the seaworthiness of the lighters, by means of which the cargo has to be carried from the ship to land, at the port of delivery, where the insurance continued until the cargo was landed. *Lane v. Nixon*, 1 L. R. 1 C. P. 412; 35 L. J. 243. In a contract by an owner of a vessel to carry goods, there is no implied condition that the ship is seaworthy. *Schloss v. Heriot*, 10 Jur. N. S. 76,—C. P. Or in a voyage policy on goods, that the goods are seaworthy for such voyage. *Koebel v. Saunders*, 17 C. B. N. S. 71; 10 Jur. N. S. 920; 33 L. J. C. P. 310; 10 L. T. N. S. 695.

[2] It is a principle of marine insurance that not only every material fact which is, but every material fact which ought to be, in the knowledge of the assured, should be made known to the insurer. *Fitzherbert v. Mather*, 1 T. R. 12; and *Gladstone v. King*, 1 M. & S. 35. *Proudfoot v. Montefiore*, 2 L. R. Q. B. 511; 36 L. J. 225. *Carr v. Montefiore*, 12 W. R. 126,—Q. B. An agent whose duty it is in the ordinary course of business to communicate information to his principal as to the state of a ship and cargo, ought to do so by electric telegraph, where that means of communication is in general use; and if the agent omits to discharge this duty, the insurance may be void, on the ground of concealment or misrepresentation. *Id.* See *Bates v. Hewitt*, 36 L. J. Q. B. 282; *Harrower v. Hutchinson*, 38 L. J. Q. B. 185.

[3] A policy of insurance on a ship was against "total loss only." During the voyage the ship sustained damage, which amounted to a constructive total loss:—*Held*, that a constructive total loss was within the terms of the policy. *Adams v. Mackenzie*, 13 C. B. N. S. 442; 9 Jur. N. S. 849; 32 L. J. C. P. 92; 11 W. R. 342; 7 L. T. N. S. 711. In deciding whether a total constructive loss, jury should consider whether practicably possible to carry cargo on taking into account all extra expenses. *Farnworth v. Hyde*, 36 L. J. C. P. 33. Submarine-cable underwriters liable for total loss, although half the cable was saved. *Wilson v. Jones*, 25 L. J. Ex. 94. Several shippers respectively shipped bales of cotton on board a general ship. Part of the bales were lost on the voyage, part thereof arrived with the marks obliterated, so that their respective owners could not be ascertained, and part arrived so as to be distinguishable and deliverable to the respective owners:—*Held*, as respects each shipper whose full number of bales could not be distinguished and delivered, that he must be taken to have sustained a total loss of part of his cotton, and a partial loss of the remainder. *Spence v. The Union Marine Insurance Company*, 27 L. J. C. P. 169. *Grainger v. Martin*, 4 B. & S. 9,—Ex. Ch. Where several valued policies of insurance are effected upon the same vessel valued differently, and upon a total loss the assured receives under some of the policies part of the sum assured, in an action upon another policy he is only entitled to recover the difference between the amount received and the agreed value in that policy. *Bruce v. Jones*, 1 H. & C. 769; 32 L. J. Ex. 132; 11 W. R. 371; 7 L. T. N. S. 748. A proprietor of shares in the Atlantic Telegraph Company, effected a policy to the declared value of 200*l.* The form of policy was the common marine printed form, but in the margin was written, after the words "risk to commence at and from and including the landing of the cable on board of the Great Eastern," the words "and to continue until the said cable be laid in one continuous length between Ireland and Newfoundland, and until one hundred words shall have been transmitted from I. to W., and *vice versâ*, the risk of this policy then to cease and determine." And, further on, that in addition to the perils and casualties specified the policy should cover "every risk and contingency attending the conveyance and successful laying of the cable." The cable broke when about half laid in an attempt to haul it up to repair an inherent defect, but the other half was saved and is valuable:—*Held*, that the policy was on the success of the adventure, not on the cable merely, and that the insured was entitled to recover as for a total loss. *Wilson v. Jones*, 1 L. R. Ex. 193; 35 L. J. 94. See *Martin v. Grainger*, 8 L. T. 79.

[4] A shipowner insured his ship, and afterwards deposited the policy, as security for advances, with his bankers, who, upon a

XIII. Of Double and Re-Insurance. The 27 & 28 Vic. c. 56, legalises Re-Assurance.[1]

XIV. As to Insurance-Brokers and Agents.[2]

XV. Of Actions upon the Policy.

(A) *When Maintainable.*[3]

(B) *Pleadings.*[4]

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constructive total loss, gave notice to the underwriters of abandonment:—*Held*, that the mere deposit of the policy conferred upon the pledgees no implied authority to give such notice, the effect of which is to vest the property in the ship in the underwriters, and which can, therefore, be only effectually given by the owner. *Jardine v. Leathley*, 3 K. L. 1700; 9 Jur. N. S. 1035; 32 L. J. Q. B. 132; 3 B. & S. 700. See *De Cuadra v. Swann*, 16 C. B. 772. *King v. Walker*, 32 L. J. Ex. 325, *sec* 38 *id.* Q. B. 321.

[1] An insurance company offered to another, by way of re-insurance, a part of a larger policy, stating that another part would be retained. The offer was accepted by the second company without investigation into the life, but before the re-insurance was completed the first company had parted with all the remainder of the policy. The life fell soon afterwards:—*Held* (affirming the decision of Stuart, V. C., 4 Giff. 485; 10 Jur. N. S. 87; 33 L. J. Chanc. 521), that the first company would be relieved in equity against the re-insurance. *Trail v. Baring*, 10 Jur. N. S. 377; 33 L. J. Chanc. 521. Plaintiffs being the insurers in a valued policy on a ship, "from B. to C., and for thirty days after she had been moored at C. in good safety," and also on a second, effected on arrival of ship at C., valued at same amount, "from C. to B., and during her stay there for thirty days after arrival, re-insured on the second policy, defendant underwriting 100*l.* The ship was lost on the passage from B. to C., and during the running of the first thirty days. Plaintiff paid on the second policy as for a total loss:—*Held*, that defendant was liable for the whole amount of his subscription, the court being of opinion that the intention was that the first policy was to end when the second began. *Union Marine Insurance Company v. Martin*, C. P. 35 L. J. 181.

[2] On the employment of any mercantile or commercial agent, it is for the jury, in the absence of any express evidence of the nature of his duties on such employment, to judge, from their own knowledge, what those duties are; and thus, on the employment of an insurance agent to effect an insurance, or get it effected, it is for the jury, in the absence of any express evidence, to judge whether he was employed to get the insurance effected, or only to place the business in the hands of brokers to effect it. *Hurrell v. Bullard*, 3 F. & F. 445. *Holland v. Russell*, 4 B. & S. 14,—Exch. Cham.; 32 L. J. Q. B. 297. The agent of an insurance company, conducting their business at a branch office, has no authority, by the mere fact of such agency, to enter into a contract to grant a policy, without the sanction and approbation of the company. *Linford v. Provincial Horse and Cattle Insurance Company*, 10 Jur. N. S. 1066; 11 L. T. N. S. 330. E. gave an authority to N. at Liverpool, to underwrite policies of insurance in his name against marine risks, not exceeding 100*l.* by any one vessel. It is well known at Liverpool, that in almost all cases a limit is put to the amount for which a broker can underwrite his principal's name; but the limit is undisclosed. N. underwrote E.'s name to a policy for 150*l.* In an action by owner against E., claiming for a total loss:—*Held*, that E. was not liable on the policy. *Baines v. Ewing*, L. R. 1 Ex. 320; 35 L. J. 194. The authority given to a broker, when he is to effect a policy of insurance, does not extend to warrant him in cancelling it. *Xenos v. Wickham*, 2 L. R. H. L. 296; 16 L. T. N. S. 800; 16 W. R. 38. In an action by insurance-brokers to recover their commission, evidence was admitted of a custom for the broker to be allowed discount by the underwriters, and to retain it as against their employers, the insurers. *Rucker v. Lunt*, 3 F. & F. 959.

[3] A policy of assurance, in a Mutual Insurance Association, was subject to the following rule: "All average claims and claims of abandonment shall be adjusted and settled, conformably to the custom of Lloyd's or the Royal Exchange, by a professional average-stater. But should the committee or the assured be dissatisfied with the adjustment, they may refer the same to two professional average-staters, or to other competent persons, with power to such two persons to appoint an umpire, and the award of such two persons shall be final; and all other cases of dispute, of whatever nature, shall be referred in like manner; but the committee or assured by mutual consent may refer all such adjustments or disputes to one person only, whose award shall also be final; and no action at law shall be brought until the arbitrators have given their decision:"—*Held*, that no action could be maintained on the policy for a total loss until the claim had been adjusted and settled by arbitration, in pursuance of the rule. *Tredwen v. Holman*, 1 H. & C. 72.

[4] To a declaration on a valued time policy, averring a total loss, the defendant pleaded only a plea of fraudulent conceal-

(C) *Evidence.*[1]

(D) *Sum Recoverable.*[2]

INTEREST.[3]

ment:—*Held*, that a total loss was not admitted; for if that allegation had been traversed the plaintiff might have recovered as for a partial loss. *King v. Walker*, 2 H. & C. 384; 33 L. J. Exch. 167. Affirmed, 33 L. J. Exch. 395. In an action on a policy of insurance, with the common memorandum, on a share in the Atlantic Telegraph Company, alleging a total loss of the cable by perils of the seas, the defendant pleaded that the subject-matter of the insurance was not, nor was any part thereof, during the continuance of the risk covered by the policy, lost by the perils insured against, or any of them. Issue having been joined on this plea, the plaintiff recovered in respect of a small portion of the cable only, the rest not having been lost by the perils insured against, the damages on the portion recovered exceeding 3*l.* per cent on the value of the policy:—*Held*, that the plea might be taken distributively, and that the verdict should accordingly be entered for the defendant as to all the claim, except so far as related to the loss of the portion of the cable, on which the plaintiff succeeded. *Paterson v. Harris*, 2 B. & C. 814; 9 Jur. N. S. 173. As to pleading payment of money into court, see *Carr v. Royal Exchange Assurance Corporation*, 5 B. & S. 941. On an issue whether the plaintiffs were not ready and willing to tender "the usual shipping documents," according to contract:—*Held*, that whether the plaintiffs had so tendered was a question for the jury. *Tamvaco v. Lucas*, 3 B. & S. 89,—Ex. Cham.

[1] The practice which formerly existed of allowing, in an action on a policy of insurance, inspection of documents in any way relating to the subject of the policy, is not affected by the acts, 14 & 15 Vic. c. 99, s. 6, and 17 & 18 Vic. c. 125, s. 50. *Rayner v. Ritson*, 35 L. J. Q. B. The mere fact of a person's name appearing in a bill of lading as the shipper and consignee of the goods is only *primâ facie*, and not conclusive, evidence that such person has an insurable interest in such goods. *Seagrave v. Union Marine Insurance Company*, 1 H. & R. 302; 1 L. R. C. P. 305; 12 Jur. N. S. 358; 35 L. J. C. P. 172; 14 W. R. 690; 14 L. T. N. S. 479. A defendant, in an action on a valued policy of insurance, does not admit a total loss by pleading in confession and avoidance only, although the declaration aver that the vessel was totally lost. *King v. Walker*, 9 Jur. N. S. 1157; 9 L. T. N. S. 259,—Exch. *Semble*, that evidence that by the usage, in the business of marine insurance, the term "particular average" does not include expenses of recovering or preserving the subject-matter of the insurance, would be admissible, since it would not contradict the express terms of the policy. 35 L. J. C. P. 250. *Lindsay v. Leathley*, 3 F. & F. 902; 11 L. T. N. S. 194,—Evidence of the owners' communications with other underwriters, even on other policies, admitted as evidence of *bona fides*. *Id.*

[2] In a policy under the suing and labouring clause, may be recovered all expenses which have been incurred for the purpose of averting a loss or damage to the subject-matter of insurance, and not merely those expenses which are incurred where the insured abandoned the subject-matter insured. *Kidston v. Empire Marine Insurance Company*, 1 L. R. C. P. 535; 12 Jur. N. S. 665; 15 W. R. 63; 15 L. T. N. S. 12. The 53 sec. 3 & 4 Vic. c. 105, extends to insurances effected before the passing of the statute, but becoming payable after. *Studdart v. Jelleo*, 9 L. J. 173,—Q. B.

[3] A letter of application for a loan until a day named, which does not show an obligation to pay on the face of it, is not "an instrument by virtue of which the debt is payable at a certain time," and is not within the meaning of the 3 & 4 Wm. 4, c. 42, s. 28. *Taylor v. Holt*, 34 L. J. Exch. 1; 13 W. R. 78; 11 L. T. N. S. 347. Upon the winding up of a company interest will be allowed on simple contract debts out of calls where a jury might have given interest in the shape of damages. *State Fire Insurance Company, in re, ex parte Times Insurance Company*, 10 Jur. N. S. 1176. There is no general rule as to the rate of interest the court will allow on repayment of consideration money expressed in an absolute assignment, which is treated only as a security for such consideration money; and, in a case where the assignee of a reversionary interest in a trust fund was the solicitor to the trust estate, and there was evidence of the assignment having been at an under value, the court allowed interest at five per cent. *Unsworth, in re*, 2 Drew. & Sm. 337; 13 W. R. 448. The customer of a bank gave a mortgage to the bankers to secure, with interest, money due and to become due upon a running account, on which it had been usual to make annual rests:—*Held*, that they had no right to make rests after the relation of banker and customer had ceased, and that the mortgage was a security only for the balance. *Croskill v. Bower—Bower v. Turner*, 30 L. J. An agreement between a vendor and purchaser that, until payment, interest shall be paid at a certain increasing rate, is not construed as a penalty. *Herbert v. Salisbury and Yeovil Railway Company*, L. R. 2 Eq. 221. Where a purchaser agrees, that if, "from any cause whatever," the purchase shall not be completed on the day fixed, he will pay interest, and the rule is this—he must pay such interest, unless the delay has been occasioned by any misconduct on the part of the vendor. *Williams v. Glenton*, 34 Beav. 528.

INTERNATIONAL LAW.[1]

INTERPLEADER ISSUE. 5 Abr. 224. At instance of Sheriff, 1 & 2 Wm. 4, c. 58; 1 & 2 Vic. c. 45; in other Cases, 1 & 2 Wm. 4, c. 58.

I. Relative to Private Claimants.[2]

II. Relative to Sheriffs or other Persons engaged in the Execution of Legal Process.[3]

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[1] Whenever a government *de facto* has obtained the possession of property for the purposes of the *de facto* government, the government which displaces it succeeds to all the rights of the former *de facto* government as to such property; but if that property has been made the subject of contract or agreement by the *de facto* government [in this case consigned on terms to a British subject at Liverpool], the government which displaces the *de facto* government succeeds to the property, subject to all the conditions and liabilities created by the *de facto* government. *The United States of America v. Prioleau*, 11 Jur. N. S. 792.

[2] An equitable claim is not the subject of an interpleader summons. *Hurst v. Sheldon*, 13 C. B. N. S. 750. A court of law is not bound by the principles which govern courts of equity upon a bill of interpleader, and may give relief although one of the parties has incurred to another a personal obligation independently of the question of property, and the claims are not identical. *Best v. Hayes*, 1 H. & C. 718; 32 L. J. Exch. 129. A. sued the defendants, to whom he had entrusted a policy for certain specified purposes, and declared in trover and detinue, and specially on the contract. B., who had pledged the policy with A., then brought an action against the same defendants for the recovery of the policy. An interpleader order was made, directing that the proceedings in the first action should be stayed till further order, that A. should be at liberty to defend the second action, indemnifying the defendants, and that B. should give the defendants security for costs:—*Held*, that the order was rightly made, *id. Tanner v. European Bank*, 1 Law Rep. Ex. 261; 35 L. J. 151, Ex.; 12 Jur. N. S. 414; 14 L. T. N. S. 412. Interpleader order made on the application of a landlord between father and son, both of whom had been treated as tenants, and both claiming the amount of valuation of tenant-right on termination of tenancy. The amount was ordered to be brought into court. *Evans v. Wright*, 1 L. R. C. P. 13; 13 L. T. 465.

[3] A sheriff who has seized goods under an execution, which are claimed by a person other than the execution debtor, has no right to file an interpleader bill without first asking the execution creditor whether he claims the goods which he had seized, and having so done the sheriff was ordered to pay the costs. *Dutton v. Furniss*, 35 L. J. 463, Ch. Sheriff's officers went to the house of a party to execute a *fieri facias*, and took possession of his goods. An auctioneer and others claimed them under a bill of sale, and proceeded to sell them, notwithstanding the resistance of the officers, whom they treated with considerable violence; whereupon the sheriff took out an interpleader summons, and served it. They disregarded this, and completed the sale and removed the goods:—*Held*, a contempt of court, both at common law and under 1 & 2 Wm. 4, c. 58. *Cooper v. Asprey*, 3 B. & S. 932. The judge's order was a remote and not a proximate consequence of the seizure of the goods, and neither the order, nor what was done under it, could be said to be the act of the execution creditors, or so direct a consequence of any act as to make them liable for it. *Id.* An execution creditor does not, by becoming a party to an interpleader issue, ratify or adopt the act of the sheriff, so as to render himself liable for the seizure of the goods which are the subject of the interpleader issue. *Woollen v. Wright*, 1 H. & C. 554. When an execution creditor seizes the goods of a stranger, and, for want of security given, they are sold by the sheriff under a judge's order, and the proceeds are paid into court to abide the event of an interpleader order, the owner of the goods cannot recover damages from the execution creditor in respect of any loss sustained after the date of the interpleader order. *Walker v. Olding*, 1 H. & C. 261; 9 Jur. N. S. 53; 32 L. J. Exch. 142. But where, after an interpleader order directing a sheriff to sell, the execution debtor was adjudicated a bankrupt, on his own petition, before the time limited by the order for the sale, and, upon the messenger entering, the sheriff withdrew, leaving him in possession, the court refused to issue an attachment against the sheriff at the suit of the execution creditor, for contempt in not proceeding to a sale pursuant to the interpleader order. *Collins v. Cliff*, 8 L. T. N. S. 466, Exch. Where an execution is levied by seizure, but the sale is suspended by an interpleader order, and before sale a petition for adjudication of bankruptcy is filed against the execution debtor, on which he is afterwards adjudged bankrupt, the case is within 12 & 13 Vic. c. 106, s. 184, and the execution creditor is deprived of the benefit of his execution. *O'Brien v. Brodie*, 1 L. R. Exch. 302; 12 Jur. N. S. 527; 35 L. J. Exch. 188; 14 W. R. 840; 14 L. T. N. S. 559.

III. Of the Costs.[1] IV. Error on Judgments.[2]

INTERMENTS ACT, 16 & 17 Vic. c. 134; 18 & 19 *id.* c. 128; 27 & 28 *id.* c. 97. *Ante*, Burial.

INTERPRETATION of Contracts. *See* Ambiguity, 1 Abr. 319; Contract, 3 Abr. p. 200; Foreign Law, 4 Abr. p. 494.

INTERROGATORIES. 5 Abr. 231. *See* Inspection and Discovery of Documents, *ante*, p. 248.

I. Interrogatories, when and how Allowed. *See* 13 Geo. 3, c. 65, as to India; 1 Wm. 4, c. 22, as to the Colonies.

II. Application for Leave to file and mode of conducting Examinations.

III. In County Courts. By an Order in Council on the 18th Nov. 1867, the provisions of the Common Law Procedure Act, 1854, as to interrogatories, was extended to these courts.

I. Interrogatories, when and how Allowed.[3]

[1] A sheriff, who, under a *fi. fa.* against a railway company, had levied execution on certain goods upon the premises of the company, was served with a notice by a third party that he claimed the goods, and thereupon the sheriff, without giving any notice of this claim to the creditors at whose instance the writ had been sued out, filed a bill of interpleader:—*Held*, that the plaintiff had acted too hastily, and on the proceedings being stayed, must pay the costs of the suit. *Dutton v. Furniss*, 35 L. J. 463, Ch.; 12 Jur. N. S. 386; 14 L. T. N. S. 319.

[2] The 17 & 18 Vic. c. 125, s. 32, authorises error to be brought upon a judgment upon a special case, stated by consent, upon the trial of an interpleader issue. *Gumm v. Tyrie*, 13 W. R. 436, Ex. Ch.

[3] The court, in deciding whether plaintiff is to be allowed to exhibit interrogatories to defendant, will look to whether the questions are *bonâ fide*, or put for an ulterior object beyond that of helping the suit. *Bickford v. Darcy*, 1 L. R. Ex. 354; 35 L. J. 202. *See* 38 L. J. C. P. 379. Interrogatories will only be allowed in support of a cause of action shown to the court, and will be refused where the object is to ascertain what the plaintiff's cause of action is, or whether he has any. *Morris v. Parr*, 6 B. & S. 203. *Jourdain v. Palmer*, 4 H. & C. 171; 35 L. J. Ex. 69. Interrogatories may be put to test *bona fides* of adverse party. *Winn v. Rose*, 36 L. J. C. P. 306. Defendant, in an action of trover, will not be allowed to deliver interrogatories to plaintiff respecting the grounds of his claim, unless some *primâ facie* foundation for the application is laid by him, admitting plaintiff's original title, or connecting him in some way with the person from whom defendant received the goods. *Finney v. Forward*, 35 Ex. 42. In an action for slander a defendant may be compelled to answer interrogatories as to the words uttered, if it is made out that the plaintiff cannot otherwise obtain redress. *Atkinson v. Fosbrooke*, 1 L. R. Q. B. 628; 35 L. J. Q. B. 182; 14 L. T. N. S. 553. *Stern v. Sevastopulo*, 14 C. B. N. S. 737; 32 L. J. C. P. 268; 11 W. R. 862; 8 L. T. N. S. 538. But in an action for libel in a newspaper were disallowed, as tending to show that the party interrogated had committed a criminal offence. *Brakes v. Lane*, 4 L. J. N. C. 52. *See* 38 L. J. C. P. 115; *id.* 146. In permitting interrogatories, the court will follow the practice in Chancery. *Hawkins v. Carr*, 14 W. R. 138; 13 L. T. N. S. 321. A liquidator having brought an action in the name of the company, in which the defendant obtained leave to deliver interrogatories to the directors:—*Held*, that those who were directors when the order for winding up was made continued to be "officers of a body corporate" within the meaning of 25 & 26 Vic. c. 89, as such, might be required to answer the interrogatories, and liable to an attachment for not answering them. *Madrid Bank (Lim.) v. Bayley*, 36 L. J. Q. B. 15; 1 L. R. Q. B. 37; 4 H. & C. 33; 1 L. R. Exch. 6. In an action for damages, where the defendant is desirous of paying money into court, the defendant will be allowed to administer interrogatories to plaintiff to ascertain what damage he has sustained. But, per Martin, B., he has no right to an answer which requires plaintiff to look at his books. *Wright v. Goodlake*, Ex. 13 W. R. 349. *Jourdain v. Palmer*, 1 L. R. Ex. 102. In an action to recover back a sum paid by plaintiff to defendant for the purchase of a business, on the ground of false representations as to profits, and other false inducements, the court allowed the plaintiff to deliver interrogatories touching the truth of the entries in defendant's books, and a statement by de-

II. Application for Leave, and mode of conducting Examinations.[1]

INVENTIONS. *See* Patent.

I O U.[2]

IRELAND.[3]

ISLE OF MAN.[4]

fendant that another person was desirous of purchasing, and would give plaintiff 250*l.* to abandon the negotiation in his favour. *Blight v. Goodliffe*, C. P. 18 C. B. N. S. 757. A defendant who admits that he has committed the breach of contract in the declaration will not, except under very special circumstances, be allowed to interrogate the plaintiff respecting the amount of damage which he had sustained. *Wright v. Goodlake*, commented upon. *Jourdain v. Palmer*, Ex. 35 L. J. 69. Plaintiff had been indicted for stealing books from a stall in a railway station, and had been acquitted. He now brought his action for malicious prosecution. Defendant asked leave to administer interrogatories to plaintiff, all of which were directed to the possession by plaintiff of the same books by name as those for stealing which he had been indicted, how he had become possessed of them, and what he had done with them:—*Held*, that all the interrogatories should be allowed. *Stewart v. Smith*, 2 L. R. C. P, 293. It is no objection to interrogatories that the answers, if given in the affirmative, will show that the execution of a deed upon which the defence is founded was obtained by fraud. *Goodman v. Holroyd*, 15 C. B. N. S. 839. In an action for injuries sustained by reason of his negligence, the defendant is not entitled to administer interrogatories to the plaintiff as to how or to the circumstances under which the accident happened, the time or persons present, the extent of the personal injury, the amount and nature of the medical attendance, or the sums paid for such attendance. *Peppiatt v. Smith*, 33 L. J. Ex. 233. Nor in ejectment, unless it is made to appear that the defendant is ignorant of the nature of the claim which the claimant intends to set up, and is unable otherwise to prepare his defence. *Stoate v. Rew*, 14 C. B. N. S. 209; 32 L. J. C. P. 160. Or where his answers might subject him to a forfeiture of his lease. *Pye v. Butterfield*, 13 W. R. 178; 11 L. T. N. S. 448, C. B.

[1] A defendant in ejectment cannot obtain an order to administer interrogatories to the plaintiff upon a common affidavit. Such affidavit must allege special circumstances. *Pearson v. Turner*, 16 C. B. N. S. 157; 10 Jur. N. S. 731; 33 L. J. C. P. 224; 12 W. R. 801; 10 L. T. N. S. 461. Form and extent of interrogatories which may be exhibited to an executor upon a plea of *plene administravit*. *Peck v. Nolan*, 14 Ir. Com. Law Rep. 32, Ex. When interrogatories sought to be allowed by a judge at chambers are numerous and drawn with great latitude and carelessness (*Phillips v. Emens*, 11 L. T. N. S. 512, Ex.), the judge will not take on himself the office of settling them. In an examination taken *ex parte*, the examiner ought not to refuse to allow questions to be put, unless upon matter which would clearly and palpably not be evidence. *Surr v. Walmsley*, 2 Law Rep. Eq. 439; 14 L. T. N. S. 621. When the interrogatories have been administered, they cannot afterwards be used on the trial with a view to contradict the person to whom they were administered, on his examination in court, on the ground that such would be an inquiry into the client's instructions to his attorney, which are privileged communications. *Carwell v. Gees*, 15 L. T. N. S. 217. Where interrogatories administered relate as much to the plaintiff's case as to the defendant's, the latter is bound to answer them, although the answers may disprove his case. *Bayley v. Griffiths*, 1 H. & C. 429. A party is bound to answer them if *bonâ fide* put, though they may subject him to penalties. *Beckford v. D'Arcy*, 35 L. J. Ex. 202. *See Baker v. Lane*, 34 *id.*; 371 L. R. Ex. 354. *Bartett v. Lewis*, 9 Jur. 202.

[2] Evidence of an account stated with the persons who produce it, and if another person was meant, the defendant must prove this. *Jesenmayer v. Adcock*, 16 M. & W. 449.

[3] Where a party to a marriage had been born and bred a Protestant, and was of a Protestant family, and had done no act to denote a change of his religion, he was held to be a Protestant within the 19 Geo. 2, c. 13, s. 1, and the marriage null and void. *Yelverton v. Longworth*, 10 Jur. N. S. 1209; 13 W. R. 235; 11 L. T. N. S. 118, H. L.

[4] The Isle of Man is not a foreign dominion of the Crown, within the meaning of the 25 Vic. c. 20; and the writ of *habeas corpus ad subjiciendum* may issue out of the English courts to that island. *Brown, In re*, 10 Jur. N. S. 945; 33 L. J. Q. B. 193; 5 B. & S. 280. The House of Keys in the Isle has not the power to commit for contempt. *Id.* By the law of the Isle of Man, user for twenty-one years creates a prescriptive right. *Cowin v. Moore*, 14 Moore, P. C. C. 354. And the Ecclesiastical Court has jurisdiction to try the validity of an alleged *donatio mortis causâ*. *Cosnahan v. Grice*, 15 Moore, P. C. C. 215. It is intended by 21 & 22

JERSEY.[1]

JOINT-TENANTS.[2] 5 Abr. 256.

JEWS' RELIEF ACTS.[3] 21 & 22 Vic. c. 49; 23 & 24 *id.* 63.

JOINT-STOCK COMPANIES.[4] 5 Abr. 238. As to Joint-Stock Banks, 7 & 8 Vic. c. 113; 21 & 22 Vic. c. 91; 25 & 26 Vic. c. 89. Joint-Stock Companies, Winding-Up, 7 & 8 Vic. c. 111; 11 & 12 Vic. c. 45; am. 12 & 13 Vic. c. 108; 20 & 21 Vic. c. 78. Joint-Stock Companies' Registration and Regulation, 7 & 8 Vic. c. 110; am. 10 & 11 Vic. c. 78; 19 & 20 Vic. c. 47; 20 & 21 Vic. c. 14; 21 & 22 Vic. c. 60; 25 & 26 Vic. c. 89; 30 & 31 *id.* c. 131. Sale of Shares, *id.* c. 29.

I. Formation of Companies before Certificate of Incorporation.

(A) *Rights, Duties, and Liabilities of Promoter.*[4]

Vic. c. 27, and 25 & 26 Vic. c. 42, that trials of issues of fact before a judge of the Court of Chancery with a jury, or before the judge alone without a jury, shall be a complete substitute for the old mode of directing issues of fact for trial by a common-law court. *Fernie v. Young*, 1 L. R. H. L. 63.

[1] The law of Jersey, which in case of bankruptcy entitles the creditors in succession, ranking from the latest creditor, to take the whole of the bankrupt's estate, with its liabilities, and become in fact the assignee, when acted on, whether it is a profitable proceeding or a *damnosa hereditas*, does not alter the right of the *cestui que trust*, or, because of its risk, give a trustee or agent acting under it a legal title to property so acquired. *Williams v. Stevens*, 1 L. R. P. C. 352; 15 W. R. 409; 36 L. J. P. C. 21.

[2] One of two joint tenants may demise his part to the other with the usual incidents of a reversion and right to distrain. Therefore, where one of three co-executors to whom land was devised in trust agreed with the others to pay a rent for it, and entered into possession, and paid rent:—*Held*, that the two might distrain for rent in arrear. *Cowper v. Fletcher*, 6 B. & S. 464; 34 L. J. Q. B. 187.

[3] The Companies Act of 1862, having for its object the consolidation and amendment of the law of Joint-Stock Companies, came into operation on the 2nd of November of that year. The Act is divided into nine parts, each treating of a portion of the subject:—Part I.—Relates to Constitution and Incorporation of Companies. II.—Distribution of capital and liability of members. III.—Management and Administration. IV.—Winding up of Companies. V.—The Registration office. VI.—Application of the Act to companies registered under the Joint-Stock Companies Acts. VII.—Of companies authorised to register under the Act. VIII.—Of the application of the act to unregistered companies. IX.—Repeal of acts and temporary provision. The Companies Act of 1867 enables companies to be constituted with limited liability in the members, and unlimited liability in the directors. Ss. 4–8, Companies to reduce their capital. Ss. 9-20, to subdivide their shares. Ss. 21-22 enable associations formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object which does not involve the payment of a dividend to the members, to register themselves as limited companies under the Act, without annexing the word "limited" to their names. S. 23. The making certain regulations with respect to calls on shares. Ss. 24–25 enable a transferror of shares to enforce a registry of the transfer. S. 26. Fully paid-up shares or stock to be issued to the bearer. Ss. 27–36 define the mode in which contracts by a company are to be executed. S. 37 enforces the publication of certain contracts in the prospectus. S. 38 requires a general meeting of a company to be held within four months after the registration of the memorandum of association. S. 39 places a restriction on persons buying shares for the purpose of enabling them to petition for the winding up of a company. S. 40 gives jurisdiction in certain cases of winding up companies to the county courts. Ss. 41–46. The act to be construed as one with Act of 1862, 24 & 25 Vic. c. 89.

[4] Defendants, being the promoters and directors of a company, obtained an advance of 500*l.* from a bank, upon the terms expressed in a letter, by which the bank were requested to allow the directors to draw to the extent of 1000*l.*, to be repaid out of the calls on shares. At that time the act constituting the company had not been passed, and the 500*l.* was borrowed to pay fees necessary to its passing. The act contained a clause providing for the payment by the company of its expenses. After the act was passed there was a resolution of the directors confirming the loan, and the bank debited the company in their accounts with the loan. No shares in the company had ever been allotted, nor calls made, though more than three years had elapsed since the passing of the act:—*Held*, that as the company were not in existence when the money was advanced, the sum was advanced on the personal liability of defendants. *Scott v. Ebury*, 36 L. J. C. P. 161; 2 L. R. C. P. 255.

(B) *Resolutions and Minutes of Proceedings.*[1]

(C) *The Prospectus.*[2]

(D) *Allotment and Allottees.*[3]

Hopcroft v. Parker, 15 W. R. 842; 16 L. T. N. S. 561—C. P. Where two persons, who had signed the memorandum of association of a limited company constituted, but *without articles of association*, enter into an agreement on behalf of the company, and within its scope and objects, the company will be bound by that agreement, by force of the first schedule, table A. upon the principle that persons (in the situation of these directors) who might have had authority, and who do an act purporting that they have it, must be taken to have had authority, and, held, the agreement was evidence of authority until rebutted. *Totterdale v. Fareham Blue Brick and Tile Company*, 1 L. R. C. P. 674; 35 L. J. C. P. 278. Provisional directors of a projected company passed a resolution that the prospectus marked with the chairman's (defendant's) initials, should be printed and circulated, and defendant handed it to W., who was the getter-up of the company, and who had undertaken to pay the preliminary expenses, but his name did not appear on the prospectus. W. employed plaintiffs to print the prospectus, telling them he was authorised by defendant to have it printed, pointing out his initials: —*Held*, in an action by the printers against the defendant, that there was evidence from which the jury might infer that he had authority to pledge defendant's credit. *Riley v. Packington*, 2 L. R. C. P. 536; 36 L. J. 204. *In re Reese*, 2 L. J. N. 139, an immoderate allowance to promoters was disallowed. Where a joint-stock company, originally registered under 7 & 8 Vic. c. 110, having incurred debts, subsequently was registered under 19 & 20 Vic. c. 47, with limited liability: the effect of this latter registration is to render the company *limited* quoad debts incurred after registration, but not so as to debts previously contracted. *The Garnett, &c. Co. v. Sutton*, Ex. Ch.; 13 W. R. 412; see *Ex parte Stevenson*, 33 L. J. 96.

[1] See *Burnside v. Dayrell*, 3 Ex. N. 224. At a meeting of the promoters of a proposed company, a resolution was passed that a prospectus, marked with the initials of the chairman, should be printed, and such prospectus was handed to W., who said he would be liable, but who, on taking it to the plaintiffs to print, told them he was authorised by the chairman, and said nothing about the understanding that he W. was to be liable: —*Held*, in an action by the plaintiffs against the chairman for the expense of printing, that there was evidence for the jury of the chairman being liable. *Riley v. Packington*, 36 L. J. C. P. 204; 2 L. R. C. P. 536; 15 W. R. 746; 16 L. T. N. S. 382. *Kelner v. Baxter*, 36 L. J. C. P. 94; 2 L. R. C. P. 174. By the articles of association the directors were authorised to refuse to register transfers of shares under certain circumstances stated. "Or in any case where the directors consider the transferree to be an irresponsible person, or that the transfer is made for purposes not conducive to the interests of the company." On the same day that a *bonâ fide* deed of transfer was left for registration, the directors passed a resolution "that no transfers of shares now in the office be registered without the sanction of the board:"—*Held*, that this resolution was not *ultra vires*. *In re Joint-Stock Discount Company (Shepherd's case)*, M. R. 2 L. R. Eq. 564, 35 L. J. 626.

[2] Notice of all contracts made prior to issue of prospectus must be given in manner provided by 30 & 31 Vic. c. 131, s. 38. Directors are bound to ascertain the truth of the representations made in their prospectus. *Smith v. Reese River Company*, 2 L. R. 2 Eq. 264. But where a party who took new shares in a company on the representation in the prospectus that the new shares were issued to enable the company to carry out a Colonial Postal contract, and it turned out that the Colonial Postmaster General, who had entered into the contract, had acted *ultra vires*, but the company subsequently obtained a somewhat different contract from the Colonial Government:—*Held*, that neither on the ground of fraud nor warranty was he entitled to rescind his contract to take shares. *Kennedy v. Panama, &c. Mail Company, and Panama, &c. Mail Company v. Kennedy*, 2 L. R. 2 Q. B. 580; 36 L. J. 260. *Hop and Malt Exchange and Warehouse Company, in re*, 35 Beav. 273. In a prospectus for a new adventure, though allowance must be made for exaggerations, in which all sanguine projectors indulge, yet no material misstatement or concealment ought to be permitted. The suppression of a fact will often amount to a misrepresentation. *Central Railway Company of Venezuela v. Kisch*, 36 L. J. Ch. 849. *Kent v. Freehold Land and Brickmaking Co.* 1 L. R. 4 Eq. 588. A company cannot retain any benefit which they have gained through the fraud of their agents. See 1 L. R. 575; 16 L. T. H. L. 811; 2 H. L. 99. *Moore v. Burke and Others*, 4 F. & F. N. P. 3. *Ross v. The Estates Investments Company*, 3 L. R. Eq. 122; 36 L. J. 54.

[3] An applicant is entitled to withdraw before an allotment is made. *Hebb's case*, 4 L R. Eq. 9. Where they are applied for they must be allotted by the directors within a reasonable time, otherwise the applicant may refuse to receive them, and may recover back the deposit paid on application. *The Ramsgate Victoria Hotel Co. (Lim.) v. Montefiore; The Same v. Goldsmid; Montefiore v. the Ramsgate Victoria Hotel Co. (Limited)*, 1 L. R. Ex. 109; 36 Ex. 90. Where ap-

(E) *Return of Deposits.*[1]

(F) *Memorandum and Articles of Association.*[2]

II. After Certificate and Incorporation.

(A) *Constitution of.*[3]

(B) *Rights, Duties, Liabilities, and Qualification of Directors.*[4]

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plied for on the 8th of June and allotted on the 23rd of November:—*Held*, that this was not an allotment within a reasonable time. *Id.* H. applied for an allotment of shares, the allotment was made and entered in the allotment-book, and the letter of allotment forwarded to the company's agent to be delivered to H., but before it was delivered H. withdrew his application and demanded a return of his deposit, which was ultimately returned to him:—*Held*, that H. never became a shareholder, as the contract was not complete. *Dunlop v. Higgins*, 1 H. L. C. 381. *In re National Savings' Bank Association* (*Hebb's case*), 4 L. R. Eq. 9. An allotment is incomplete if the manager had no power to make it. *Ex parte Mallone*, 1 L. J. N. 406. *Ex parte Gunn*, *id.* 249. A person applying on the faith of a prospectus for shares in a limited company, and by his application authorising the entry of his name on the register as a shareholder, is not at liberty to trust to the statements of the prospectus, but is bound to examine the memorandum of association, and, after the lapse of a reasonable time from the registration of the memorandum, will be held to have waived such examination. *Lawrence, ex parte*, 36 L. J. Ch. 490. *Oake's and Peeke's Cases*, 2 L. R. H. L. 325; 15 W. R. 1201; 16 L. T. 808.

[1] A person who applies for shares on the faith of a false prospectus is entitled to a return of deposits, and to avoid the contract. *Henderson v. Lacon*, 5 L. R. Eq. 249; 17 L. T. 527; 16 W. R. 328; See 4 L. R. Eq. 588.

[2] Every person who applies for shares in a limited company, registered or to be registered, must be assumed to know that no company desiring limited liability can rest upon its prospectus, but that there must either then exist a registered memorandum of association, or that a memorandum of association must shortly be registered, to the adding his name to which as a shareholder he had given his authority; and if he remains passive beyond a reasonable time, within which he might acquaint himself with its contents, he will not be removed from the register of shareholders on the ground of variance between the prospectus and the memorandum of association. *Lawrence's Case; Kincaird's Case*, 2 L. R. Ch. Ap. 412; 36 L. J. 490 and 499. *See Eales v. Cumberland Mining Company*, 6 H. & N. 431; 30 L. J. Ex. 141.

[3] The alteration of the name of a company registered under this act is not legally complete until the registrar of joint-stock companies issues his certificate of incorporation in the new name; and in any proceedings commenced previous to that time the old name should be used. *Shackleford, Ford, & Co. v. Dangerfield*, 3 L. R. C. P. 407; 37 L. J. 151; 18 L. T. 289. The proviso at the end of the 196th section of the Companies' Act, 1862, has not the effect of preserving to a company in existence at the date of the act, and afterwards registered under it as a limited company, a power to reduce the amount of its capital originally given by its deed of settlement, but after registration under the act with limited liability such power is gone. *The Droitwich Patent Salt Co.* (*Lim.*) *v. Curzon*, 37 Ex. 2. Where public bodies are incorporated by statute for trading or other profitable purposes, the proper rule of construction of such statutes is, that in the absence of something to show a contrary intention, the Legislature intends that the body, the creature of the statute, shall have the same duties, and that its funds shall be rendered subject to the same liabilities as the general law would impose on private persons doing the same things. *The Mersey Docks Trustees v. Gibbs—Same v. Penhallow*, 1 L. R. H. L. 93; 35 L. J. Ex. 225. If a company has no power to do a particular thing, that power cannot be added to the company by the agreement of the shareholders, nor can it be inferred to have been done legally merely from acquiescence, or from subsequent delay in questioning the transaction; but if a company has power to do a thing, and there be only requisite a particular formality, such as the consent of a general meeting, in order to warrant the exercise of the power, then acquiescence may be inferred by delay, and a knowledge of the transaction imputed to every shareholder. *British Provident Life and Fire Insurance Society, In re, ex parte Grady*, 9 Jur. N. S. 631; 32 L. J. Ch. 326; 11 W. R. 385; 8 L. T. N. S. 98. In matters strictly relating to the internal management of a company, even though the course adopted is not within the terms of the instrument of foundation, the court will not interfere. *Gregory v. Patchett*, 10 Jur. N. S. 1118; 13 W. R. 34; 11 L. T. N. S. 357—R.

[4] By articles of association of a company it was declared, that no person should be eligible as a director unless he held fifty shares at the least. One of the persons declared director by the articles had signed the memorandum of association for twenty-five shares only:—*Held*, that he was not liable as a contributory for fifty shares. *Llanharry Hematite Iron Ore Company, In re—Stock, ex parte—Roney, ex parte*, 10 Jur. N. S. 812; 33 L. J. Ch. 731; 12 W. R. 814, 994;

(C) *Duties and Liabilities of Directors as to Creditors and Contractors.*[1]

10 L. T. N. S. 394—R. et L. J. Where a qualification in shares is required, that qualification cannot be got in nominally paid-up shares. *Id. Cottrell, ex parte, in re National Assurance and Investment Association*, 32 L. J. Ch. 66; 7 L. T. N. S. 341. A secretary to a company ceases to hold the office on becoming a director. 37 L. J. C. P. 273. By the articles of association of a company incorporated under this act it was provided that each director should receive 50*l.* per annum, but no fund was named for payment, nor any person to make the payment:—*Held*, on demurrer, that an action lay by a director against the company. *Orton v. Cleveland Firebrick, &c. Co.*, Ex. 11 Jur. N. S. 531. A company registered may by their articles of association agree to pay a remuneration to each of their directors and an action is maintainable on such contract. *Orton v. Firebrick Company*, 3 H. & C. 868. A director of a company, registered under 19 & 20 Vict. c. 47, cannot make a binding contract for profit to himself in a transaction with the company. *Hill, ex parte, in re Cardiff Preserved Coal and Coke Company*, 32 L. J. Ch. 154; 7 L. T. N. S. 656—L. J. *See Eales v. Cumberland Black Lead Company*, 6 H. & N. 431; 30 L. J. Ex. 141; *Stears v. South Essex Gas Company*, 35 L. J. C. P. 49; 9 C. B. 180. It is the undoubted right of every shareholder in a company to prevent the directors from exceeding their powers. *Filder v. London, Brighton, and South Coast Railway Company—Barchard v. Brighton, Uckfield, and Tunbridge Wells Railway Company*, 1 H. & M. 489.

[1] Seven persons signed a memorandum of association of a company for making bricks; the memorandum was duly registered. There never were any articles of association. Two of such persons (one professing to act as managing director, the other as chairman of the company) engaged plaintiff as foreman of the company at certain brickworks. In an action by plaintiff for his wages:—*Held*, that, in the absence of proof to the contrary, the company must be taken to have given authority to such two persons to engage plaintiff. *Totterdell v. the Farcham Blue Brick and Tile Company* (*Lim.*), 35 L. J. C. P. 278. Where a joint-stock company, being registered under the Joint-Stock Companies' Act, 1856, had acquired under s. 41 the right of contracting by their agent, such power still remains, as that is "a right or privilege" which is saved by the 206th section of 25 & 26 Vic. c. 89, notwithstanding the repeal of the Joint-Stock Companies' Act, 1856. *Prince v. Prince*, 1 L. R. Eq. 490; 35 L. J. 290. *State Fire Insurance Company, In re, ex parte, Meredith and Convers*, 32 L. J. Ch. 300; 11 W. R. 416; 8 L. T. N. S. 146—V. C. W. Assuming that a resolution of a board of directors, signed by the chairman, would be sufficient to revive against a company a debt barred by the Statute of Limitations, *semble*, the acknowledgment will be vitiated if the resolution was come to by a board meeting at which the creditor was himself present in his character of director. *Lowndes v. Garnett & Moseley Gold Mining Company of America*, 33 L. J. Ch. 418. Where two persons, who had signed the memorandum of association of a limited company constituted under this Act, but *without articles of association*, enter into an agreement on behalf of the company, and within its scope and objects, the company will be bound by that agreement. *Totterdell v. Fareham Blue Prick and Tile Company*, 1 L. R. C. P. 674; 35 L. J. C. P. 278. A railway company under its act of incorporation, was empowered, as soon as the whole of its capital should be subscribed for, and one half paid up, to borrow, upon mortgage of the undertaking, a certain sum of money. When but a small sum only of the capital was subscribed for, the company commenced operations for carrying the scheme into effect and incurred liabilities, to meet which C. (who was chairman of the board of directors) and B. (a director) borrowed 10,000*l* on behalf of the company, giving their joint and several promissory note to the lender by way of security. The amount thus raised was duly expended in the affairs of the company. Repayment of the sum advanced having been demanded, B. paid the amount, and then commenced an action against C., his co-surety. The directors thereupon issued "Lloyd's bonds" for a sufficient amount, which were handed over to C., who, by mortgage thereof, raised the sum necessary for the settlement of the action against himself at the suit of B. The company having subsequently repudiated the bonds:—*Held*, that this amounted to a borrowing by the company; that the general scheme and object of the Legislature, as shown in sect. 19 of the 7 & 8 Vict. c. 85, and sect. 38 of the 8 & 9 Vict. c. 16, read in conjunction with the company's act of incorporation was, that the company should borrow in no other way than that specified in the latter act; and that the bonds were void, as having been issued by the directors *ultra vires*. *Chambers v. Manchester and Milford Railway Company*, 10 Jur. N. S. 700; 33 L. J. Q. B. 268; 12 W. R. 980; 10 L. T. N. S. 715. A bond made in this particular form is not valid as security for a debt not previously existing, and, where there is no actual debt, such a bond cannot create one. *Id. White v. Carmarthen, &c. Railway Company*, 1 H. & M. 786; 33 L. J. Ch. 93; 11 L. T. N. S. 179n. A prospectus of a projected company for the conveyance of emigrants to British Columbia contained statements calculated to induce intending emigrants to believe that arrangements had been perfected for the object in view, and inviting them to take tickets for their passage, and the public to purchase shares. This prospectus was shown by the secretary to the defendants, and they were asked to

(D) *Duties and Liabilities of Directors as to Torts and Wrongs.*[1]

III. Funds of.[2]

IV. Shares.

(A) *Acceptance of.*[3]

(B) *Calls on, and Forfeiture of.*[4]

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allow their names to be inserted therein as directors, to which they consented, on being qualified (that is, presented each with 200 paid up shares of the nominal value of 10*l.* each) and indemnified. Their names were accordingly inserted, and the prospectus published and advertised in the "Times:"—*Held*, that, from these facts, the jury were warranted in inferring that one who contracted with the secretary for a passage, and paid his money, upon the faith of the representations contained in the prospectus, did so upon the credit of the defendants, and, consequently, that he was entitled to sue them for a breach of such contract. *Collingwood v. Berkeley*, 15 C. B. N. S. 145. Where a quorum of the directors of a public company are empowered to contract by affixing the seal of the company, it is essential to the validity of the act that the assent for affixing the seal should be given by the quorum, at the same time acting together. *D'Arcy v. The Tamar &c. Railway Company*, Ex. 14 W. R. 968.

[1] Directors of a limited company, who with the company were made parties to a suit in respect of illegal and wrongful acts done by them, and sanctioned by the company, are not, by reason of the adoption of their acts by the company, exempt from personal liability. *Betts v. De Vitre*, 11 Jur. N. S. 9. Reports made by the directors of a company, and afterwards adopted and circulated by the company, are binding on the company as statements made by the authority of the company itself. *New Brunswick and Canada Railway and Land Company*, 9 H. L. Cas. 711. In an action against the secretary, the solicitor, and several of the directors of a company (established for a certain manufacture), for false and fraudulent representations, by which the plaintiff had been induced to take shares, the representation being in the prospectus and balance-sheet as to profit deduced from actual working, and a dividend declared as arising out of such profit so derived; and the two fundamental facts on which the representations of profits were based, the supply of the raw material and the cost of it, being falsified, and the accounts being altered so as to conceal the falsification, and also so as to bring into the year's account only a portion of the preliminary expenses:—*Held*, first, that though the latter alone, or any error in the mere mode of keeping the accounts, would not be evidence of fraudulent representation, the falsification of facts and of figures was so, as against any of the defendants who were aware of the issue of the prospectus. *Bale v. Cleland*, 4 F. & F. 117

[2] Where, by the deed of settlement, the directors of a company were authorised to borrow money on the security of the funds and property of the company, and to assign such funds and property by way of mortgage, and, in exercise of this power, they assigned the funds and property of the company by a debenture:—*Held*, that the charge created by the debenture did not extend to the unpaid capital of the company. *British Provident Life and Fire Assurance Society, In re, ex parte Stanley*, 10 Jur. N. S. 712; 33 L. J. Chanc. 535; 12 W. R. 894; 10 L. T. N. S. 674—L. J. *King v. Marshall*, 10 Jur. N. S. 921; 10 L. T. N. S. 557.

[3] Wood, V. C., *In re the Saloon Steampacket Company* (*Fletcher's case*), 17 L. T. Rep. N. S. 136. "Three things," said the Vice-Chancellor, "are necessary to constitute a complete contract to take shares. First, there must be an application for shares; secondly, an allotment of shares; thirdly, the allotment must be communicated and acquiesced in." When these things are done the contract is complete, and the person becomes a shareholder.

[4] Although where, in an action for a call, the register of shareholders is the only evidence that the defendant is a shareholder, that register must be shown to be strictly in accordance with section 9; yet where the defendant is shown to have subscribed the deed, and his name and the number of shares is on the register of shareholders kept under section 9, but *the distinguishing numbers* of the shares are not therein stated, though they are stated in the "shareholders' address-book," the defendant is a "shareholder" under section 8, and liable in an action for a call. *East Gloucestershire Railway Company v. Bartholomew*, 3 L. R. Ex. 15; 37 L. J. 17; 17 L. T. 256. It is a good answer at common law to an action for calls, that the defendant was induced to become the holder of the shares by the fraud of the plaintiffs, that he has never received any benefit from the shares, and that within a reasonable time after he had notice of the fraud he repudiated and disclaimed the shares, and gave notice of the repudiation thereof to the plaintiffs;—whatever his liability to the creditors of the company may be in equity, under the Winding-up Acts or otherwise. *The Bwlch y Plwm Lead Mining Co.* (*Lim.*) *v. Baynes*, 36 L. J. Ex. 183; 2 L. R. Ex. 225. Shares in a joint-stock company held to have been validly forfeited for non-payment of calls, and the shareholder removed from the list of contributories, although by clauses in the deed of association a resolution of forfeiture by the directors, and notice thereof to the

(C) *Transfer of.*[1]

(D) *Subdivision of Shares.*[2]

(E) *Preference Shares and Debentures.*[3]

(F) *Contracts for Sale of.*[4]

(G) *Measure of Damages for Breach.*[5]

(H) *Mortgage of.*[6]

(I) *Share-Broker and Stock-Exchange Dealings.* *See* Stock and Stock-Broker, *post.*

(K) *Registration of.*[7]

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shareholder, was directed; and there was no minute of the forfeiture in the books and no notice given. *Knight's case*, 1 L. J. L. R. 2 Ch. Ap. 321; 36 L. J. 117. After forfeiture no interest on the calls is payable. *In re The Blakley Ordnance Company (Stocken's case)*, 5 M. R. L. R. 5 Eq. 6; 37 L. J. 2; 17 L. T. 161.

[1] By the 16th section of the Companies' Clauses Consolidation Act, 1845, it is enacted that "no shareholder shall be entitled to transfer any share after any call shall have been made in respect thereof, until he shall have paid such call, nor until he shall have paid all calls for the time being due on every share held by him." H., being the holder of certain 25*l.* shares in a railway company, had allotted to him, in respect of those shares, sixty-six new "preference 10*l.* shares," created for the purpose of raising additional capital. Calls were made in respect of both sets of shares, and those made in respect of the 10*l.* shares held by the defendant were duly paid by him, but some of those made in respect of the 25*l.* shares held by him were never paid. The 10*l.* shares were subsequently converted into stock, and were sold by H. to the plaintiff; but the company refused to register the transfer, on the ground that H. had not paid the calls due upon the original 25*l.* shares held by him:—*Held*, affirming the judgment of the Court of Queen's Bench, that there being no calls due in respect of the 10*l.* shares, H. was entitled to transfer the stock into which they had been converted to the plaintiff, and that the company were bound to register the transfer when required to do so. *Hubbersty v. The Manchester, Sheffield, and Lincolnshire Railway Company*, 36 L. J. Q. B. 198; 2 L. R. Q. B. 59. Where a deed of settlement of a company provided that the directors should not be at liberty to purchase shares without the sanction of a general meeting previously obtained:—*Held*, that it was sufficient if that sanction were obtained before the agreement was finally concluded, and that the directors might in the meantime treat and enter into a conditional contract for the purchase of shares. *British Provident Life and Fire Assurance Society, In re, ex parte Lane*, 1 De G. J. & Sm. 504; 10 Jur. N. S. 25; 33 L. J. Chanc. 84. In the absence of all privity between the parties there is no liability to indemnify a seller of shares against future calls. *Torrington v. Low*, 3 L. J. N. 259.

[2] Sects. 21 and 22, 30 & 31 Vic. c. 31, enable companies to subdivide their shares, preserving a proportionate liability in respect of any unpaid calls. As to creation of half shares, *see Hull Hose Company v. Wellesley*, 30 L. J. Ex. 5.

[3] *See Moss v. Syers*, 32 L. J. Ch. 711. *Hutton v. Scarborough Hotel Company*, 34 L. J. Ch. 643.

[4] *New Brunswick Railway Company v. Muggeridge*, 30 L. J. Ch. 242; *see* 34 *id.* 545.

[5] This is the difference between the price agreed upon and the market price of the shares at the time the contract was broken. *Shaw v. Holland*, 15 M. & W. 136. *Westropp v. Solomon*, 8 C. B. 345.

[6] A mortgagee of shares not standing in his own name cannot be compelled to pay calls. *Newry Railway Company v. Moss*, 14 Beav. 64. Memorandum of deposit, with power of sale, does not require a stamp. 23 L. J. Ex. 22.

[7] A registered joint-stock company for the manufacture and sale of goods dwells and carries on business, within the 9 & 10 Vic. c. 95, s. 128, at the place of manufacture and sale, and not at the registered office of the company. *Keynsham Blue Lias Lime Company v. Baker*, 2 H. & C. 729; 33 L. J. Ex. 41. When a company, registered under 7 & 8 Vic. c. 110, was amalgamated with, and assigned over its debts and liabilities to another company, the shareholders still remain liable as before to creditors, and are not discharged at the expiration of three years after the amalgamation. *Woodhams v. Anglo-Australian Company*, 10 Jur. N. S. 482; 12 W. R. 674; 10 L. T. N. S. 178—L. J. The defendant, being a shareholder in a company, conducted on the cost-book principle, in October 1861 sold and transferred all his shares; in November the company was registered under the Joint-stock Companies' Acts, 1856, 1857; in April, 1862, an order of the vice-warden of the stannaries was made for winding up the company; and under that order, in April, 1863, his name was put on the list of contributories to the company. In March, 1863, an action was commenced by the plaintiff against the defendant for goods supplied to the company between 1859 and 1861, while he held shares. On an application for a stay of proceedings,

(L) *Rectification of Registers.*[1]

(M) *Judge's Order to Charge Shares.*[2]

V. Meeting of Members and Proceedings at.[3]

VI. Companies Limited.[4]

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on the ground that the action could not be brought without leave of the court, pursuant to sect. 6 of the 21 & 22 Vic. c. 60:—*Held*, that the defendant was not within the protection of that section; for that neither was he, nor had he been, a member of the registered company, nor was the debt a debt of that company; and that the fact of the vice-warden having put the defendant on the list of contributories made no difference, as the act was *ultra vires*. *Lanyon v. Smith*, 9 Jur. N. S. 1228; 32 L. J. Q. B. 212; 11 W. R. 665; 8 L. T. N. S. 312. The 8th section of the Act, 1845, which enacts that "every person shall be deemed a shareholder who shall have subscribed the contract of the company, and whose name shall have been entered in the register of shareholders hereinafter mentioned," and section 9, which directs that the register shall distinguish each share by its number, are substantially satisfied by a shareholder's name being entered in the register without the distinguishing numbers of his shares, it being shown by other evidence that the shares held by him were actually distinguished by particular numbers. *The Wolverhampton Waterworks Co. v. Hawkesford* and *The Irish Peat Co. v. Phillips*, distinguished, 37 L. J. Ex. 120. *See* 31 *id.* C. P. 184; 11 C. B. 456. As to when a party may by his negligence be estopped from impugning title of *bonâ fide* registered purchaser, *see ex parte Swan*, 30 L. J. C. P. 113, *ante*, Estoppel.

[1] The court will not make an order to rectify, if it appears that an action by the company against the applicant for calls upon the shares, alleged to have been due before and at the time of the transfer, is pending at the time of the application. *Ex parte Harris, in re Anglo Porcelain Company*, 36 L. J. Ex. 364; S. C. 5 H. & N. 809. The omission to register a transfer in due course after the transfer had been left at the company's office, caused by the great arrear of such matters in consequence of the non-attendance of the *rota* director:—*Held*, to be such "unnecessary delay" as entitled the transferrer to the removal of his name from the list of contributories. *In re Joint Stock Discount Company. Ex parte Read*, 36 L. J. C. 472; 15 W. R. 631; 16 L. T. 111. A joint-stock company having placed on the register of shareholders a person who had a good equitable title to be there, cannot afterwards, *proprio motu*, remove that person from the register on the ground of a legal flaw in his title. A railway company having recovered a judgment against B., B. procured C., a married woman, to purchase shares in the company for her, which were registered in C.'s name as a widow; afterwards C., by B.'s direction, sold and transferred the shares to plaintiff, and the company registered plaintiff. Subsequently the company, discovering the facts, removed plaintiff from the register—mandamus to compel the company to re-register plaintiff. *Ward v. South Eastern Railway Company*, Q. B.; 2 Ell. & Ell. 812. By the articles of association a transfer of shares was not to be registered until executed by both transferror and transferree; and the directors had power to refuse to register a transferree. W., a shareholder, sold his shares *bonâ fide* to R. and executed the transfer, but R. did not. The company was ordered to be wound up:—*Held*, on the application of W. to have his name removed from the register, and R.'s name substituted, that the court had no power to do so. *In re Overend, Gurney & Co.* (*Walker's case*), 2 L. R. Eq. 554.

[2] A judge has power, under the 1 & 2 Vic. c. 110, s. 14, to order shares in a company to stand charged with payment of a judgment debt recovered against the registered owner of the shares, although he holds them as trustee only. *Cragg v. Taylor*, 4 H. & C. 158; 1 L. R. Exch. 148; 12 Jur. N. S. 320; 35 L. J. Exch. 92; 14 W. R. 399.

[3] At a specially convened meeting of a company established for granting insurances on lives, it was resolved to extend the business to marine insurances. The resolutions were afterwards confirmed; a deed embodying them was executed by some, but not all, of the shareholders; and in the annual return to the joint-stock companies' registry office, the business of the company was stated to include marine insurance. The reports of the directors several times alluded to the extension of the business, and on one occasion a report alluding to such extension accompanied the dividend warrant. The business, as extended, was carried on for a year and a half, when the company was ordered to be wound up:—*Held*, that the general body of shareholders was not bound, by acquiescence or otherwise, to the alteration of the business involved in this extension, and consequently that holders of marine policies could not come in as creditors of the company in respect of losses upon such policies. *Phœnix Life Insurance Company, In re, ex parte Burges and Stock*, 9 Jur. N. S. 15—V. C. W. *Held*, however, that the holders of such policies might claim in respect of the premiums actually paid. *Id.*

[4] The Act 1862 provides for three kinds of company with limited liability, and for one kind with unlimited liability. (*See* the Act, sects. 7, 8, 9 and 10, and also 14 and 38.) These four kinds are as follows:—(1.) A company with shares, in which the

VII. Registration of Shareholders.[1]

VIII. Winding up.[2]

(A) *Courts for.*[3]

liability of each member is limited to the amount unpaid on his shares (called "a company limited by shares"). (2.) A company with shares in which the liability of the members does not exceed the sum unpaid upon their shares, together with such sum as they may respectively undertake to contribute on the company being wound up (called "a company limited by guarantee"). (3.) A company without shares, in which the liability of the members is limited to the amount which they may respectively undertake to contribute on the company being wound up (called "a company limited by guarantee"). (4.) A company with shares, but with unlimited liability (called "an unlimited company"). (5.) Each of these societies is to be formed by seven or more persons signing a memorandum of association, but this document will be of a different nature in each case. I will first state what they all contain in common. They all contain (1.) The name of the proposed company. (2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate. (3.) The objects for which the proposed company is to be established. But the companies limited by shares, or by guarantee, must add the word "limited" as the last word of the name. By the act of 1867, s. 4, a company, if so provided by memorandum of association, may have directors or managers with unlimited liability; and by sect. 6 directors with unlimited liability may have a set-off, as under section 101 25 & 26 Vic. c. 89; but by sec. 7 notice must be given to the director that his liability will be unlimited.

[1] This is provided for by sect. 174 of act 1862. A person may be a shareholder of a company within the meaning of sect. 27 of the statute 8 & 9 Vic. c. 16, without there being a register of shareholders duly authenticated by the seal of the company, provided he is entered in a book analogous to a register, as the holder of shares numbered and specifically appropriated to him. *The Wolverhampton New Waterworks Co. v. Hawkesford* (Ex. Ch.), 31 L. J. Rep. (N. S.) C. P. 184; 11 Com. B. Rep. N. S. 456. After the name of a person has been wrongfully placed upon the register of any company, it is not in the power of the directors by simply removing his name from the register effectually to indemnify him against liability arising from such wrongful insertion of his name; if they desire to do so, they must apply to the court for the purpose, and if they neglect so to do, the shareholder may himself apply, notwithstanding that his name has been in fact removed. *In re the Bank of Hindustan, China and Japan* (*Higgs's case*), 2 Hem. & M. 657; and *Martin's case*, 2 Hem. & M. 669. On a motion to rectify register, the court ought to decide on the title to the shares. *Ex parte Swan*, 30 L. J. C. P. 113. *See Ship's case*, 2 De Gex J. & T. 544. The Court of Chancery has concurrent jurisdiction with the Stannaries Court to rectify register. *In re Penhale and Lomax Consolidated Silver and Lead-mining Company*, 2 L. J. N. 113. The jurisdiction under this section is general, and not confined to cases where the register was incorrect through default of the company, but the court has a discretion as to whether it will exercise its jurisdiction or not. *Ward and Henry's case*. 2 L. R. 431 C. A commissioner in bankruptcy has power to grant a re-hearing, and to reverse an order, whereby he had placed the name of a deceased shareholder in a company upon the list of contributories, it appearing that the shareholder had died before the date of the winding-up order. *Southampton, Isle of Wight, and Portsmouth Improved Steamboat Company, ex parte, in re Hopkins*, 10 Jur. N. S. 529; 33 L. J. Bank. 40; 10 L. T. N. S. 283, C.

[2] The fourth part of the act (1862) relates to the winding up of companies and associations formed under this act. In this part the provisions relating to winding up contained in the several acts of 1856, 1857, and 1858 are consolidated, and various enactments are added from the Winding-up Acts of 1848 and 1849. It provides for three systems of winding up: the winding up altogether by the court; the winding up altogether voluntarily; and the winding up subject to the supervision of the court. Where an order has been obtained for the winding up of a company, and an official manager and creditor's representative has been duly appointed and chosen, an action brought by a creditor against a shareholder or contributory, in contravention of the 11 & 12 Vic. c. 45, s. 73, and 20 & 21 Vic. c. 78, s. 7, may be stayed by the court, or a judge of the court out of which the writ issues. *Thomas v. Wells*, 16 C. B. N. S. 508; 10 Jur. N. S. 543; 33 L. J. C. P. 211.

[3] In case of a company working a mine within and subject to the jurisdiction of the Stannaries, the Court of the Vice-warden of the Stannaries; but the latter may certify that the company would be better wound up in the Court of Chancery. In the case of other companies registered in England, the Court of Chancery; so in Ireland. In Scotland, the Court of Session. Provided that the English or Irish Court of Chancery may transfer the winding up to the Court of Bankruptcy. Prior to 25 & 26 Vic. c. 89, a limited company, which was liable to be wound up in the Bankruptcy Court, passed

(B) *What Companies may be.*[1]

(C) *Petition and Proceedings.*[2]

(D) *Official Managers and Liquidators.*[3]

a resolution for winding up voluntarily, but after the Companies Act of 1862 had come into operation, a petition was presented for winding it up compulsorily.—*Held*, that under the 25 & 26 Vic. c. 89, s. 207, the jurisdiction was in Baukruptcy and not in Chancery. *West Silver Bank Mining Company, In re*, 32 Beav. 226. The provisions of the 25 & 26 Vic. c. 89, as to winding-up orders under the Court of Chancery, are not intended to apply to cases where there is a very small body of the shareholders, and no difficulties in the way of voluntary winding up exist. *Natal, &c. Company, In re*, 1 H. & M. 639. Sect. 32 of 18 & 19 Vic. c. 32, extending the jurisdiction of the Stannaries court over the county of Devon, does not oust the jurisdiction of the Court of Chancery over mines in that county. *South Lady Bertha Coppermining Company, In re*, 9 Jur. N. S. 170; 32 L. J. Chanc. 92.

[1] A joint-stock company, registered under the Joint-Stock Companies Act, 1856–7 or 8, may be wound up voluntarily under the supervision of the Court, although it has not been re-registered under the above Act of 1862. *In re London India-rubber Company*, 1 L. R. Ch. Ap. 329. In the definition, in sect. 81 of the 25 & 26 Vic. c. 89, of the court having jurisdiction to wind up a company, the words "engaged in working" are to be read as "formed for the purposes of working." *East Botallack Consolidated Mining Company (Limited), In re*, 11 L. T. N. S. 408, *Alfreton District Friendly and Provident Society, In re*, 11 W. R. 301; 7 L. T., N. S. 817. *Midland Counties Benefit Building Society, In re*, 33 L. J. Ch. 739, L. J. And a canal company incorporated by act of parliament, although the act of parliament may have contemplated the carrying on of the company in perpetuity. *In re Wey and Arun Junction Canal Company*, 4 L. R. Eq. 197; 36 L. J. 509. But not an insurance company not registered under act 1862. *Waterloo Insurance Company, In re*, 9 Jur. N. S. 291.

[2] Applications for winding up are to be made by petition, from the presentation of which the winding up will commence.—Sect. 84 of the Act 1862. The petition may be presented by the company, by a creditor, or by a contributory, or by any one or more of such parties; and every order made on such petition shall operate in favour of all the creditors and contributories.—Sect. 82. An affidavit in support of a petition to wind up a society was filed before instead of after the presentation of the petition; the court allowed the affidavit to be resworn and filed. *Western Benefit Building Society, In re*, 33 L. J. Ch. 179, R. The court ordered a winding-up petition to be served on any five of the directors of a company which had shut up its office and transferred its business to another office. *Unity General Assurance Association, In re*, 8 L. T. N. S. 160. *See London and Westminster Wine Company, In re*, 9 L. T. N. S. 321. Where a petition for the winding up of a company is duly advertised, both the company and shareholders may appear and oppose the petition, though they have not been served with the petition. *In re Marlborough Club Company*, 1 L. R. Eq. 216; 35 L. J. 146. Where the court refuses to make any order, the shareholders supporting the petition get no costs, and the shareholders resisting the petition get no costs unless personally assailed. Where the court makes the order to wind up, and the shareholders and creditors, together or separate, appear to support the petition, one set of costs only is to be given amongst them." *In re Humber Ironworks Company*, 2 L. R. P. 15 Eq. A notice by a dissentient shareholder to the liquidators and directors of a company under sect. 161, requiring them to abstain from carrying a resolution, there spoken of, into effect, is not bad by reason of the alternative demand being to purchase his shares *at the amount he had paid for them*, instead of "at a price to be determined by arbitration." *In re Anglo-Italian Bank and De Rozas*, L. R. 2 Q. B. 452.

[3] Sects. 92, 97, Act 1862, relate to the appointment and duties of official liquidators. A petition for winding up a company should not also pray for the appointment of a particular person as official liquidator. The court has power to appoint one at the hearing of the petition if the parties consent; otherwise the matter must be settled in chambers. *Commercial Discount Company, In re*, 7 L. T. N. S. 816, R. Where a petition for winding up by the court is not opposed, the court will appoint a provisional liquidator as a matter of course, but it will not do so where the winding up is opposed by the directors. After the appointment no transfer of shares can take place. *Per Emerson's case*, 2 L. R. Eq. 236. When the official assignee of a company, whose affairs are in course of administration under the Winding-up Acts, proves a debt against a bankrupt contributory, he deprives himself of a right to other remedy by suit or action; and the bankrupt being in custody for contempt by nonpayment of calls, is entitled to his discharge. *Life Assurance Treasury, In re, ex parte Pepper*, 8 L. T. N. S. 533, V. C. W. A company, under 19 & 20 Vic. c. 47, and 21 & 22 Vic. c. 60, proceeded to wind itself up, and appointed liquidators. An action having been brought by the liquidators on behalf of the company against one of the shareholders in it, as a contributory to the company, to recover the amount of a call on his shares:—*Held*, that the shareholder was entitled to set off a claim which he had

(E) *Contributories.*[1]

(*a*) *Registered Shareholders and Holders of Paid-up Shares.*[2]

(*b*) *Applicants for Shares.*[3]

(*c*) *Shares held on Condition or taking upon Misrepresentation.*[4]

(*d*) *Executors, Trustees, and Holders in names of others.*[5]

(*e*) *Transferror of Shares.*[6]

(*f*) *Persons who have Forfeited Shares or Withdrawn.*[7]

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against the company. *Garnet and Moseley Gold-mining Company of America v. Sutton*, 3 B. & S. 321; 9 Jur. N. S. 542; 32 L. J. Q. B. 47. The appointment of an official liquidator at a general meeting for the voluntary winding-up of a company:—*Held* to be invalid, because the notice convening the meeting did not state that an official liquidator would be appointed. *Stearic Acid Company, In re*, 32 L. J. Ch. 784; 8 L. T., N. S. 759. The Appellate Court will not interfere with the discretion of the judge in the appointment of an official liquidator. *In re International Contract Company*, 1 L. R. Ch. Ap. 523; and *In re London, Bombay, and Mediterranean Bank, id.* 525.

[1] By part 4 in Act 1862, "contributory" is to mean every person liable to contribute to the assets of the company in the event of its being wound up. Notice to the contributors by the liquidator before his name is put on the list is not a condition precedent. *Brighton Arcade v. Dowling*, 3 L. J. N. 47.

[2] The word "contributories" in sec. 133 is not to be confined to members of a company who are liable to pay, but includes members who, by having fully paid up, may be entitled to receive on an "adjustment" of rights. *In re Anglesea Colliery Company*, L. R. 2 Eq. 379; 35 E. J. 546. *Currie, ex parte, in re Great Northern and Midland Coal Company*, 32 L. J. Chanc. 57; 11 W. R. 675, L. J.

[3] Where a person applies for shares in a company as to whom no obligation on the part of the directors to allot them exists, notice of allotment is essential to constitute a completed transaction; and registration of the applicant as shareholder is not sufficient. *Richmond Hill Hotel Company* (*Pellatt's case*), 2 L. R. Ch. Ap. 527. Applicants for shares were required to pay 1*l.* per share on application, and 2*l.* on allotment. B. applied for 100 shares, and gave a cheque for 100*l.*, on condition that the cheque should be returned if the shares were not allotted in a few days. Two days afterwards 100 shares were allotted to him, but no notice of the allotment was sent to him, nor did he pay the 2*l.* a share:—*Held*, that he was a contributory in respect of the 100 shares. *New Theatre Company, In re, ex parte Bloxam*, 10 Jur. N. S. 833; 33 L. J. Chanc. 574. *Exhall Coal Mining Company, In re, ex parte Miles*, 10 Jur. N. S. 1013; 10 L. T. N. S. 896. *In re Rolling Stock Company of Ireland* (*Shackleford's case*), 1 L. R. Ch. Ap. 567; 35 L. J. 818. But not where contract is not complete. *In re Leeds Banking Company* (*Howard's case*), L. J. L. R. 1 Ch. Ap. 561.

[4] Although a person may have been induced by misrepresentations and fraud to agree to become a member of a company, so that as between himself and the company he might be in a position to avoid the contract making him a shareholder, yet if his name be on the register when a winding-up order is made, this agreement to become a member is sufficient to render him a contributory as regards creditors. *Oake's and Peek's cases*, 2 L. R. H. L. 325. *See* 30 L. J. C. 322; 32 *id.* 278; 34 Bea. 634.

[5] The liability of a trustee as a contributory will not be limited to the extent of the trust estate. *Phœnix Life Assurance*, 31 L. J. C. 504. In the absence of proof that notice was given to a company, that shares were taken as agent, and not as principal, the court refused to remove the name of the alleged agent from the list of contributories. *Bird, ex parte, re Southampton, Isle of Wight, and Portsmouth Improved Steam-boat Company*, 10 Jur. N. S. 138; 33 L. J., Bank. 49. *See* 33 *id.* 609; 33 Bea. 455. As to owners of shares in names of others, *see* 33 L. J. C. 145; *id.* 607.

[6] Where the holder of shares in a joint-stock company instructs a broker of the Stock Exchange to sell his shares, which he does, and at the time the company was in the course of being wound up voluntarily, the vendor is bound to execute a transfer of the shares; and it is no answer for him to say that the liquidator had not sanctioned the transfer. And held on demurrer that he was liable to his broker for his loss incurred by the shares being bought in against him according to the rules of the Stock Exchange. *Biedermen v. Stone*, 2 L. R., 2 C. P. 504; 36 L. J. 198. A solicitor who transferred shares in a company to his farm bailiff, nominally for a sum of money which never passed, and confessedly to escape liability:—*Held*, to be a contributory, the transfer being fraudulent. *Semble*, the transferree could have maintained a bill against the transferror to be relieved from the transfer; and had the transfer not been registered, a mandamus would not have been granted to compel registration. *In re the Electric Telegraph Company of Ireland* (*Budd's case*), 3 De G. F. & J. 207. *Wheal Emily Mining Company, In re, ex parte Cox*, 33 L. J. C. 145.

[7] The principle that shareholders in a company may be bound by acts of the directors *ultra vires*, as in the present case,

(*g*) *Directors.*[1]

(*h*) *Extent of Liability—Set-off.*[2]

(*i*) *Appeal from Winding up.*[3]

IX. Companies under Charter and Deed of Settlement.[4]

X. Actions by and against Companies.

(1) *When Maintainable—Pleadings and Costs.*[5]

forfeiture of shares upon terms if agreed to by a particular day, on the ground of notice and long acquiescence, will not apply to a case where the forfeiture was not agreed upon until after the day stated in the notice. *Brotherhood's case*, distinguished from the present on that ground. *In re Agricultural Cattle Insurance Company* (*Stewart's case*), 1 L. R. Ch. 511; 35 L. J. 750. *See Ex parte Barrett*, 33 L. J. C. 617.

[1] C. signed the articles of association of a joint-stock company for one share, his name appearing thereon as a director. The qualification for a director was twenty-five shares; he attended meetings as a director, and he applied for twenty-five shares, but before they were allotted he resigned his directorship, and no allotment was made to him:—*Held*, on winding-up, that he was only a contributory for one share. *In re General International Agency Company* (*Chapman's case*), 2 L. R. 2 Eq. 567. A. was nominated a director of a new company by the articles of association, which provided that no person should be eligible as a director unless holding in his own right fifty shares. By the memorandum of association, which he signed, he agreed to take twenty-five shares only. He subsequently signed the articles themselves:—*Held*, that though a director, he was not liable as a contributory for more than the twenty-five shares which he had agreed to take. *In re Llanharry Hematite Iron Ore Company, ex parte Roney, ex parte Stock*, 10 Jur. N. S. 790; 33 L. J. Ch. 731. A person who had only conditionally consented to act as a director, but who, at the only meeting of directors at which he attended, had joined in signing a cheque as director, was removed from the list of contributories, he never having applied for shares, and upon receiving notice of an allotment to qualify him as director, he having refused to receive them, or to act as a director. *In re Peninsular, West Indian, and Southern Bank* (*Austin's case*), 2 L. R., 2 Eq. 435.

[2] A shareholder of a company in course of winding up, being also a creditor of the company, assigned his estate and effects to trustees for his creditors under section 192 of the Bankruptcy Act, 1861:—*Held*, that inasmuch as a set-off of mutual creditors was allowed by the Bankrupt Law Consolidation Act, 1849, though not allowed in respect of calls by the Companies' Act, 1862, the Court of Chancery, sitting as the Court of Appeal in Bankruptcy, was bound to allow the claim upon the company to be set off against the calls. *Grissell's case* distinguished. *In re Duckworth, ex parte Cooper*, 36 L. J. B. C. 28. See *In re The Commercial Bank of India and the East. Smith, Fleming, & Co.'s case. Gledstane's case*, 1 L. R. Ch. Ap. 538. A shareholder in a limited company in course of winding up, whose shares are not fully paid up, and who is also a creditor of the company, is not entitled to set off his debt against a call, but having paid the call, though less than the full limit, he is entitled to take dividends on his entire debt *pari passu* with other creditors. *In re Overend, Gurney, & Co.* (*Grissell's case*), 1 L. R. Ch. Ap. 528; 35 L. J. 752. There is no power in the court to order three months' salary to be paid in full to clerks of companies being wound up. *In re General Rolling Stock Company* (*Chapman's case*), 1 L. R. Eq. 346. Although the Court of Chancery has no power to order a call to be made in a winding-up case for the payment of interest on a simple contract debt, not carrying interest (*In re Hadfield's Patent Cask Co.* 8 L. T. 846), where the debt is payable at a fixed time, and a jury would give interest, the court has power to make a call for payment of interest. *In re State Fire, &c. "The Times,"* 34 L. J. N. S. 58.

[3] The Appellate Court will not interfere with the discretion of the judge in the appointment of an official liquidator, and if there are new facts to show that the judge made an improper appointment, or was deceived, an application should be made to him to reconsider the appointment. *In re International Contract Company*, L. R. Ch. Ap. 523; and *In re London, Bombay, and Mediterranean Bank*, *id.* 525. Nor will it enlarge the time for appealing against orders, unless a good and sufficient reason for an extension of time be shown. *In re Hull Forge Company, Ex parte Mitchell*, 36 L. J. 337.

[4] Under very special circumstances a company under a deed of settlement may by resolution sanction a deviation from its provisions. *Featherstonehaugh v. Lee Moor Porcelain Clay Co.* 1 L. R. Eq. 318; 35 L. J. 84. A suit by an official manager of an unincorporated society, representing a particular class of shareholders, against another class of shareholders, praying that they might be declared liable to make good certain funds alleged to have been misapplied, cannot be maintained. *Ernest v. Weiss*, 32 L. J. Ch. 113; 7 L. T. N. S. 613.

[5] The defendant being a shareholder in a company conducted on the cost-book principle, in October 1861 sold and transferred all his shares; in November the company was registered under the Joint-Stock Companies Acts, 1856, 1857; in April, 1862, an

XI. Other Legal Proceedings.

(*a*) *Executions*.[1]

XII. Scire Facias against Companies and Shareholders.[2]

XIII. Criminal Proceedings.[3]

order of the Vice-warden of the Stannaries was made for winding up the company; and under that order, in April 1863, his name was put on the list of contributories to the company. In March, 1863, an action was commenced by the plaintiff against the defendant for goods supplied to the company between 1859 and 1861, while he held shares. On an application for a stay of proceedings, on the ground that the action could not be brought without leave of the court, pursuant to sect. 6 of the 21 & 22 Vict. c. 60:—*Held*, that the defendant was not within the protection of that section. *Lanyon v. Smith*, 9 Jur. N. S. 1228; 32 L. J. Q. B. 212; 11 W. R. 665; 8 L. T. N. S. 312. To an action brought against defendant for not indemnifying plaintiff against calls made in respect of shares in a joint-stock company sold to defendant by plaintiff, defendant pleaded that, before the making of the agreement in the declaration mentioned, a resolution had been passed requiring the company to be wound up voluntarily; that a petition had been presented, and the winding up had commenced, and the company had been wound up; that before and at the time of the making of the agreement plaintiff knew of the resolution, the petition and the commencement of the winding up, but that defendant was ignorant of them; that neither the sanction of the court or of the official liquidator to the sale or transfer of the shares had been obtained:— *Held*, that the plea disclosed no answer to the action, and was bad. *Rudge v. Bowman*, 39 L. J. Q. B. 193. Under a voluntary winding up in an action for calls a set-off of a debt due from the Company may be pleaded. *Brighton Arcade Co. v. Dawley*, 3 L. J. N. 26. The rule of the court of limiting security for costs to 100*l*., where a plaintiff is out of the jurisdiction, does not apply to the security for costs to be given under s. 63, where a company of limited liability is plaintiff. *Imperial Bank of China, India, and Japan, v. Bank of Hindustan, China, and Japan*, 1 L. R. 1 Ch. Ap. 437.

[1] Where property of company not substantially sufficient, court may allow execution against a shareholder without a previous levy in property not sufficient. *Ilfracombe R. C. v. Paltemore*, 37 L. J. C. P. 86 A judgment creditor of a company, which is being wound up, may obtain from the Court leave to proceed with execution. *In re The London Cotton Manufacturing Co.* 35 L. J. 425. A shareholder of a company against whom the balance of a judgment debt is sought to be recovered has clearly a right to be informed how the balance is made up. And, *semble*, this section does not give any right to the creditor to recover against the shareholder costs subsequent to the judgment. *Scott v. Uxbridge and Rickmansworth Railway Co.*, 1 L. R. 4 C. P. 596; 35 L. J. 293. A judgment creditor of a company issued a *fi. fa.* against the effects of the company, but before execution was levied a winding-up order was obtained, and an official liquidator appointed. The court granted an injunction to restrain the creditor from proceeding to execution. *In re Waterloo Life Insurance Company*, 31 Beav. 589; 9 Jur. N. S. 291; 32 L. J. Ch. 371. A creditor who obtains judgment against a company, and issues execution *bonâ fide* before the presentation of a petition to wind up the company, will not be restrained from realising his judgment by reason of the winding-up petition. *In re Great Ship Company, ex parte Parry*, 12 W. R. 139; 9 L. T. N. S. 432. L. J.

[2] The power of the Court to issue a *scire facias* against a shareholder on a judgment against a company is discretionary. *Shrimpton v. The Sidmouth Railway Company*, 3 L. R. C. P. 80; 17 L. T. 647. It is not essential that, before moving for a *sci. fa.* against a shareholder, the abortive writ or writs of *fi. fa.* against the company should have been filed. The notice of motion mentioned in s. 36 must be served personally; but the rule *nisi* may be served on the shareholder's solicitor. *The Ilfracombe Railway Company v. Devon and Somerset Railway Company*, 2 L. R. C. P. 15. Where a judgment creditor of a company obtains a rule for a *sci. fa.* against a shareholder, and the latter shows no cause, execution may issue without the *sci. fa.* at the request of the shareholder. *Burk v. Dublin Trunk, &c. Railway Company* (*Millar's case*), 3 L. R., Q. B. 47; 37 L. J. 50; 16 W. R. 107. And it is sufficient cause against the rule if the shareholder has *bonâ fide* paid the full amount of his liability to another creditor who had commenced proceedings against him, though not up to judgment or execution. The court will not allow a *scire facias* to go against one as a shareholder in a company, unless reasonably satisfied that he actually is a shareholder. *Mather v. National Assurance Association*, *In re Clark*, 14 C. B. N. S. 676. *Edwards v. Kilkenny and Great Southern and Western Railway Company*, 14 C. B. N. S. 526. Error on the face of the record is no ground for refusing a *sci. fa.* against a shareholder on a judgment against the company. *Williams v. Sidmouth R. C.*, 36 L. J. Ex. 184.

[3] On an indictment against F. as servant to A. and others, for embezzlement, proof was given that F. was servant to a trading company, calling itself the R. Coal Company, limited; that this name was over the

XIV. Bankruptcy.[1]

JUDGE.[2]

JUDGE Orders, and Proceedings connected with Jurisdiction at Chambers.[3]

JUDGMENT. Abr. v. 262. *See* 1 Wm. 4, c. 7; 23 & 24 Vic. c. 38, s. 115; 31 & 32 *id.* c. 154.

I. Of Superior Court.
(A) *How and when Signed*, p. 275.
(B) *As to* Scire Facias *on Judgment. See post*, Scire Facias.
(C) *Registering Judgment*, p. 276.
(D) *Effect of Judgments and Charging Orders*, p. 276.
(E) *Satisfaction of Judgment and Entry on Roll*, p. 277.
II. Judgment of a Foreign Court, p. 277.
III. Action and Proceedings on Judgment, p. 277.
IV. Judgment Recovered, Plea of, p. 277.

I. Of Superior Court.

(A) *How and when Signed.*[4]

office door of the company; that there were eighty shareholders, of whom A. was one; that its affairs were managed by directors; that its shares were transferable by certificate, without the consent of the other shareholders; and that a minute-book of resolutions was kept. No certificate of incorporation was put in evidence:—*Held*, that there was no evidence for the jury that the company was incorporated, and that F. was properly alleged in the indictment to be the servant of A. and others. *Reg. v. Frankland*, 9 Cox, C. C. 273; 9 Jur. N. S. 388; 32 L. J. M. C. 69.

[1] Under sect. 15 & 30, 8 Vic. c. 11, joint-stock companies might have been made bankrupt, is repealed by 25 & 26 Vic. c. 89.

[2] An action does not lie against a judge of one of the superior courts for a judicial act, though alleged to have been done maliciously and corruptly. *Fray v. Blackburn* (*Knt.*), 3 B. & S. 576.

[3] An action will lie on a judge's order to refer made by consent, the consent being evidence of an agreement to perform the award. *Lievesley v. Gilmore*, 1 L. R. C. P. 570; 12 Jur. N. S. 874; 35 L. J. C. P. 351; 15 L. T. N. S. 386. Applications in the nature of appeal from the decision of a judge at chambers may be made at any time within the ensuing term. *Oldham Building and Manufacturing Company v. Heald*, 3 H. & C. 132. Where a judge's order directs that "three days after service of a copy of this order at defendant's residence the plaintiff be at liberty to proceed in this action as if personal service of the writ of summons had been effected upon defendant," the defendant has the whole of the third day to enter an appearance, so that plaintiff cannot sign judgment in default of appearance until the fourth day after service. *Weeks v. Wray*, L. R. 3 Q. B. 212; 37 L. J. 84; 16 W. R. 399; 17 L. T. 498. Where a rule *nisi* to rescind an order of a judge, by way of appeal from the decision of the judge, is discharged, it is the practice to discharge the rule with costs; but where the point raised is new and abstruse, the court will refuse the costs. *Hawkins v. Carr*, 35 L. J. Q. B. 81. When a rule *nisi* has been discharged, the court has no power, on the application of the party who obtained and supported it, to alter it by striking out any portion of it, when the party who has shown cause objects to the alteration. *Kynnaird v. Leslie*, 12 Jur. N. S. 468, C. P. When a judge has made an order on an *ex-parte* statement, the other side must apply first to the judge, to reconsider his order, before applying to the court to set it aside. *Day v. Vincent*, 12 W. R. 281; 9 L. T. N. S. 654, Exch. If it be intended to ask as part of a judge's order that costs be paid by the plaintiff's attorney, on the ground of alleged misconduct on his part, it is necessary to give distinct notice in the summons of the intention to make such application; and if a judge at chambers, without any such notice to the attorney, orders the attorney to pay costs, that part of the order will be set aside. *Rouch v. Alberty*, 33 L. J. Q. B. 127. Where a summons is dismissed on an undertaking by a party, it must be fulfilled, though no order be drawn up. *Clarke v. Tyne Commissioners*, 37 L. J. C. P. 110. 30 & 31 Vic. c. 68, provides for the despatch of business in chambers, and the rules to carry out act promulgated, 25 November, 1867.

[4] A judgment in default of a plea cannot regularly be signed before eleven o'clock on the day following that on which the time for pleading expires. And the fact that according to the rule of Easter Term, 1856, the other offices on Saturday are closed at two o'clock, though the Judgment Office remains open till five, was not intended to make any

(B) *As to* Scire Facias *on Judgment.* *See post*, Scire Facias.

(C) *Registering Judgment.*[1]

(D) *Effect of Judgments and Charging Orders.*[2]

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difference. *Connelly v. Bremner*, L. R. 1 C. P. 557; 35 L. J. 319. The death of an infant plaintiff in an action for negligence between verdict and the signing of judgment is no ground for a stay of proceedings, if judgment has been signed within the time specified in 17 Car. 2, c. 8, s. 1, and the Act, 1852, s. 139. *Kramer v. Waymark*, 1 L. R. Exch. 241; 12 Jur. N. S. 395; 35 L. J. Exch. 148; 14 W. R. 659; 14 L. T. N. S. 368.

[1] The 23 & 24 Vic. c. 38, s. 1, applies to lands in which the judgment-debtor has an equitable interest. *Wallis v. Morris*, 10 Jur. N. S. 741; 10 L. T. N. S. 709. And it is not restricted in its operation to the protection of heirs, executors, and administrators against claims by unregistered judgment creditors, but absolutely deprives unregistered judgment debts of all priority in the administration of assets; and the act applies equally to judgments of county courts as to other judgments. *In re Turner*, 10 Jur. N. S. 147; 33 L. J. Ch. 232. But it does not apply to judgments obtained against a personal representative. *In re Rigby*, 33 L. J. Ch. 149. The order of registration of judgments in the county register determines the priorities of the judgments; registration in the Common Pleas operates only to complete the charge. *Neve v. Flood*, 10 Jur. N. S. 607; 12 W. R. 897; 10 L. T. N. S. 520,—R. A registered *lis pendens* does not create a charge or lien on the property, nor does it excuse a purchaser from completing his contract. *Bull v. Hutchens*, 32 Beav. 615. A judgment signed in 1854, but not registered until after the death of the debtor, which happened after the passing of the 23 & 24 Vic. c. 38, is, by sec. 3, not entitled to preference in the administration of the debtor's estate. *Kemp v. Waddingham*, 1 L. R. Q. B. 355; 35 L. J. Q. B. 114; 14 W. R. 390; 13 L. T. N. S. 709. Judgments against executors and administrators need not be registered in the Common Pleas under 23 & 24 Vic. c. 38, s. 3, in order to retain their preference in the administration of the estate. *Jennings v. Rigby*, 33 Beav. 198. The 23 & 24 Vic. c. 38, s. 4, as to registering judgments, is not retrospective. *Evans v. Williams*, 2 Drew. & Sm. 324; 34 L. J. Ch. 661; 12 L. T. N. S. 762.

[2] By 27 & 28 Vic. c. 112, s. 1, no judgment, statute, or recognisance to be entered up after the passing of the Act (29th of July, 1864) shall affect any land (of whatever tenure) until such land shall have been actually delivered in execution by virtue of a writ of *elegit* or other lawful authority, in pursuance of such judgment, statute, or recognisance. By sec. 2, judgment shall be taken to include registered decrees, orders of court of equity and bankruptcy, and other orders having the operation of a judgment. By sec. 3, every writ or other process of execution of any such judgment, &c., by virtue whereof any land shall have been actually delivered in execution, shall be registered in the manner provided by the 23 & 24 Vic. c. 38, but in the name of the debtor against whom such writ or process is issued, instead of, as under the said Act, in the name of the creditor; and no other or prior registration of such judgment, &c., shall be deemed necessary; and no reference to any such prior registration shall be required in the memorandum of such writ or other process which shall be left with the senior master of the Court of Common Pleas for the purpose of registry. By sec. 4, every creditor to whom any land shall have been actually delivered in execution, and shall be duly registered, shall be entitled forthwith, or at any time afterwards, to obtain from the Court of Chancery, in a summary way, an order for the sale of his debtor's interest, and the court shall direct all such inquiries to be made as to the nature of the debtor's interest as shall appear to be necessary. By sec. 5, if it shall appear that any other debt due on any judgment is a charge on such land, the creditors entitled to the benefit of such charge to have the benefit thereof, and shall be entitled to share according to their respective priorities. By sec. 6, every person claiming any interest in such land under the debtor, subsequent to the delivery of such land in execution, shall be bound by such order of sale, and by all the proceedings thereon. *Semble*, this act does not apply to an equity of redemption, inasmuch as such an interest in land cannot be delivered in execution. *Thornton v. Finch*, 4 Giff. 515; 34 L. J. Ch. 466. A registered judgment is of no effect on the priority of an incumbrancer on land, unless execution is issued thereon. *Thomas v. Cross*, 2 Drew. & Sm. 423; 11 Jur. N. S. 384; 34 L. J. Chanc. 580; 13 W. R. 647; 12 L. T. N. S. 293. The statute applies only to future judgments. *In re Isle of Wight Ferry Company*, 11 Jur. N. S. 279; 34 L. J. Ch. 194; 12 L. T. N. S. 263. And by the 1 & 2 Vic. c. 110, s. 14, contingent reversionary life interest of a judgment debtor in the surplus (if any) of stock standing in the name of trustees, and assigned by him to another set of trustees, on trust to sell it and pay his debts, to a named amount, with a resulting trust, as to the surplus after such payment (subject to the present life interest of another person therein) in favour of the

(E) *Satisfaction of Judgment and Entry on Roll.*[1]

II. Judgment of a Foreign Court.[2]

III. Action and Proceedings on Judgments.[3]

IV. Judgment Recovered, Plea of.[4]

JUDICIAL Committee of Privy Council. *See post*, Privy Council.

debtor, is chargeable, notwithstanding the doubtful nature of the interest and the uncertainty as to its extent. *Baker v. Tynte*, 2 El. & El. 897. The defendant, being possessed of shares in a company, transferred them to B. as a security for a debt. Subsequently he assigned them (subject to B.'s debt) to trustees, to repay a loan which had been made to him by his brother, and to apply the surplus for the benefit, at the trustees' discretion, of his wife, his children, or himself. There were other trusts for the benefit of his wife and children, and an ultimate trust, on his wife's decease, and in case no child attained the age of twenty-one, or being a daughter married before that age, to the defendant and his assigns:—*Held*, that he had an interest in the shares capable of being charged under 1 & 2 Vic. c. 110, s. 14, and 3 & 4 Vic. c. 82, s. 1. *Cragg v. Taylor*, 2 L. R. Exch. 131; 15 L. T. N. S. 584; 36 L. J. Exch. 63. The obligation to pay a sum of money under an order of a court of equity is merely an equitable debt, and cannot be made the ground of a petition for adjudication in bankruptcy. *Blencowe, ex parte, in re Blencowe*, 1 L. R. Ch. App. 393; 35 L. J. Bank. Cas. 18; 14 L. T. N. S. 389.

[1] The court will not strike out from the register of the court an entry made under 1 & 2 Vic. c. 110, s. 19, of a decree of the Court of Divorce. *Holden v. Holden*, 9 Jur. N. S. 948; 32 L. J. C. P. 111. A plaintiff, after making an entry of a judgment against the defendant, under 1 & 2 Vic. c. 110, s. 19, took the defendant in execution, who afterwards obtained his discharge from the Insolvent Debtors' Court. After such discharge, and before the expiration of five years from the entry, the plaintiff re-registered the judgment. On an application by mortgagees of after-acquired estate of the defendant for a rule ordering the plaintiff to attend before the master, and consent to an entry on the register that he had taken the defendant in execution:—*Held*, that the court had no jurisdiction to make the order. *Hallet v. Dyne*, 12 W. R. 159; 9 L. T. N. S. 574.—Exch. A judgment creditor, whose debt had been satisfied, but who had not entered satisfaction on the rolls, was made a defendant to a foreclosure suit. He disclaimed:—*Held*, that he was not entitled to his costs, in consequence of his negligence in not entering up satisfaction of his judgment. *Thompson v. Hudson*, 34 Beav. 107.

[2] A foreign judgment may be reviewed by the courts of this country if any error appears upon the face of the record. *Simpson v. Fogo*, 1 H. & M. 195; 9 Jur. N. S. 403; 32 L. J. Ch. 249; 11 W. R. 418; 8 L. T. N. S. 61. But such a judgment where there is jurisdiction over the parties and subject-matter of the suit, cannot be impeached on the ground that it is erroneous upon the merits. *De Cosse Brissac v. Rathbone*, 6 H. & N. 301; 30 L. J. Exch. 238. It is competent to our courts to examine the sentence of a foreign Court of Admiralty, to see whether it proceeds on that which would be a just ground of condemnation by the law of nations, or on another ground which would amount only to a breach of the municipal regulations of the condemning country. *Hobbs v. Henning or Heming*, 17 C. B. N. S. 791; 11 Jur. N. S. 223; 34 L. J. C. P. 117; 13 W. R. 441; 12 L. T. N. S. 205.

[3] Where an action is brought upon a judgment for a sum not exceeding 20*l.* for the purpose of enabling the plaintiff, by adding the costs to the sum recovered by the judgment, to recover a sum exceeding 20*l*, and so to issue a *ca. sa.* and defeat the object of the 7 & 8 Vic. c. 96, s. 57, the discretion of the court under 43 Geo. 3, c. 46, s. 4, as to granting costs to the plaintiff, is not taken away by the later statute, but they will be guided in the exercise of that discretion by its provisions. *Dickinson v. Angell*, 3 B. & S. 840. While a judgment subsists in its entirety, no averment by either party can be admitted to controvert it. *Huffer v. Allen*, 2 L. R. Exch. 15; 12 Jur. N. S. 930; 36 L. J. Exch. 17; 15 L. T. N. S. 225. Where the master of a ship signs a bill of lading in his own name, and is sued upon it, and judgment is obtained against him, an action will not lie against the owner of the ship upon the same bill of lading, although satisfaction has not been obtained on the judgment against the master. *Priestly v. Fernie*, 3 H. & C. 977. The judgments of courts of concurrent jurisdiction are evidence only where the very same matter comes distinctly in issue between the same parties. *Mackintosh v. Smith*, 4 Macq. H. L. Cas. 913. By 31 & 32 Vic. c. 54, judgments obtained in one part of the kingdom may be enforced in any other part.

[4] The plea of *res judicata* is not a good defence unless the subsequent suit or action is between the same parties and upon the same subject-matter. Therefore such a plea is not applicable to an action for a poor-rate in respect of a different year from that which had been claimed and negatived in the former suit. *Leith Harbour and Dock Commissioners v. Inspector of Poor*, 1 L. R. H. L. 17.

JURISDICTION. *See* Admiralty; Colonies; County Court, &c.

JURY and JURORS.[1] 5 Abr. 277; Jurors' Act, 6 Geo. 4, c. 50; 24 & 25 Vic. c. 78; 25 & 26 *id.* c. 107; 22 & 23 *id.* c. 7 (S.); 30 & 31 *id.* c. 35; 31 & 32 *id.* c. 75.

JUS tertii.[2]

JUSTICES of the Peace. 5 Abr. 285. *See* also Apprentices; Certiarori; Constable; False Imprisonment; Habeas Corpus; Poor; Prohibition; Session; Warrant. As to Poor, 12 & 13 Vic. c. 64; 15 & 16 *id.* c. 38; the duties of, out of Sessions, 11 & 12 *id.* cc. 42, 43; jurisdiction of, in Session, 5 & 6 *id.* c. 38; (*sum. jurisd.*), 20 & 21 *id.* c. 43; (*powers of*), c. 73; protection of, 11 & 12 *id.* c. 44; jurisdiction, 26 & 27 *id.* c. 77; removal of disqualification, 30 & 31 *id.* c. 115.

I. Jurisdiction, Duties, and Privileges.

(A) *Jurisdiction in General*, p. 279.

(B) *Of Stipendiary Magistrates*, p. 279.

(C) *Informations and Summons before*, p. 279.

(D) *Attendance of Attorney*, p. 280.

(E) *Orders and Warrants of*, p. 280.

(F) *Must abstain from adjudicating where he has Interest*, p. 280.

(G) *May be compelled to perform Duty by Rule of Court*, p. 280.

(H) *Clerks to Justices*, p. 280.

II. Action against, p. 280.

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[1] Where a judge at chambers has refused an application for a special jury, the court will not interfere with the discretion of the judge, in the absence of special grounds. *Smith v. The London and St. Katherine's Dock Company*, L. R. 2 C. P. 630. Although a cause has been marked in the list as a common-jury case up to commission-day, yet if a defendant has given the six days' notice for a special jury, and the special-jury panel be in fact annexed to the record, it will be tried as a special-jury case. *Quære*, how defendant should proceed if plaintiff refuse to allow the special-jury panel to be annexed to the record? *Mose v. St. Leonard's Gas Co.* 4 Fost. & Fin. N. P. Cas. 55. A jury may, without consent, be discharged from finding upon an issue which their findings on other issues render immaterial. *Tisdall v. Parnell*, 14 Ir. Com. Law Rep. 1, —Exch. A jury sworn and charged with a prisoner may be discharged without giving a verdict by the presiding judge, if a "necessity," that is, a high degree of need, for such discharge is made evident to the mind of the judge. He alone is to decide when the "necessity" for such discharge is made evident to his mind, and his decision is not subject to review by any legal tribunal. The statement upon the record by the judge of the result of such a decision is sufficient to establish the lawfulness of the discharge. Such a discharge, even if it be an improper exercise of discretion on the part of the judge, is not a legal bar to a subsequent trial of the prisoner for the same offence, either upon the same or upon a fresh indictment. *Winsor v. The Queen*, 35 L. J. Ex. Ch. 161; 1 L. R. Q. B. 289. It is no ground of error, either in fact or in law, that the whole of the special jurors struck were not summoned, or that the special-jury panel was called over and a tales prayed before ten o'clock in the morning, the time for which the special jurors were summoned. These are irregularities which the court may set right on motion, if any injustice has been caused by their occurrence. *Irwin v. Grey*, 15 W. R. 593; 16 L. T. N. S. 74; 36 L. J. C. P. 148; 2 L. R. H. L. 20. A judge is not bound to receive the first verdict which the jury give. He may direct them to reconsider it. The verdict the jury ultimately returns is the verdict to be recorded. *R. v. Meany*, 32 L. J. M. C. 24; 1 L. & C. 213.

[2] In answer to an action at the suit of a bailor, the bailee, where he relies on the right and acts on the authority of the true owner, may set up the title of such owner, although the bailor may have become possessed of the goods bailed illegally only, and without actual fraud. *Biddle v. Bond*, 11 Jur. N. S. 425; 34 L. J. Q. B. 137; 13 W. R. 561; 12 L. T. N. S. 178.

I. Jurisdiction, Duties, and Privileges.

(A) *Jurisdiction in General.*[1]

(B) *Of Stipendiary Magistrates.*[2]

(C) *Informations and Summons before.*[3]

[1] The power conferred upon justices by 11 & 12 Vic. c. 42, ss. 2, 17, 20, of binding over the prosecutor and witnesses to prosecute or give evidence against any person charged with an indictable offence, committed on land beyond the sea, at the next court of oyer and terminer or gaol delivery, or superior court of a county palatine, or court of general or quarter sessions of the peace, extends to cases where the offence is one of those specified in 42 Geo. 3, c. 85, and that the description "court of oyer and terminer," in 11 & 12 Vic. c. 32, s. 20, applies to the Court of Queen's Bench. *Reg. v. Eyre*, 37 Law J. Rep. 159,—Q. B. The justices of a county adjoining the sea have jurisdiction over offences committed on the sea-shore between high and low-water mark, whether the offence was committed when the tide was in or out. *Embleton v. Brown*, 3 Ell. & Ell. 234; 30 L. J. M. C. 1. The rule that where title comes into question in a proceeding before justices, their jurisdiction is ousted, does not apply to a case where title is an essential element in the inquiry which the justices have to determine; therefore, in a proceeding under this section to obtain possession of a parish house, a claim of title does not oust the jurisdiction of the justices, and if there was evidence before them that the house was a parish house, this court will not review their decision. *Ex parte Vaughan*, 2 L. R. Q. B. 114; 36 L. J. M. C. 17. At the hearing of a summons to enforce payment of a church-rate, although the justices are the tribunal to decide in the first instance whether a party's objection is *bonâ fide* or not, they cannot, by deciding contrary to the facts that it is not *bonâ fide*, give themselves jurisdiction. *Reg. v. Huntsworth*, 10 Jur. N. S. 945; 33 L. J. M. C. 131; *see* 11 W. R. 780. Where, by an act, power is conferred upon justices to issue a distress warrant, "if they shall think fit," they must not refuse merely because they think the act does an injustice in giving such power in the particular case. *Reg. v. Boteler*, 33 L. J. M. C. 101; 12 W. R. 466,—Q. B. To oust justices, upon a summary conviction, of their jurisdiction by the assertion of a *bonâ fide* claim of right, such claim must have some colour to support it. *Hudson v. Macrea*, 4 B. & S. 585; 33 L. J. M. C. 65. Where a complaint has been made to the magistrates of an assault with a view to an adjudication thereon, the party injured cannot, by afterwards compromising the case, take away the jurisdiction. *In re Hawkins*, 594; 8 L. T. N. S. 242. On a charge for an assault, evidence of a rape was given. The justices being of opinion that there was sufficient evidence of an assault, but none which warranted them in committing for the graver charge, summarily convicted the defendant for an assault: —*Held*, that they had jurisdiction. *Wilkinson v. Dutton*, 9 Jur. N. S. 1104; 32 L. J. M. C. 152. Where justices summarily convict for several offences at the same time, they have the power of making the periods of imprisonment to commence at the expiration of the sentence previously awarded, although the defendant may not at the time of the sentence be actually in prison undergoing imprisonment. *Reg. v. Cutbush*, 2 L. R. Q. B. 379; 36 L. J. M. C. 70. If an assistant overseer apprehend a man for running away and leaving his wife and children chargeable, bring him before a magistrate and charge him with such desertion, the magistrate ought to hear and determine the matter, although the proceedings have been taken without the direction of the board of guardians. *Reg. v. Mirehouse*, 32 L. J. M. C. 90. If a defendant be charged with obstructing the works of a local board of health, he is not necessarily entitled to have the case dismissed by the magistrates because the obstruction took place in assertion of a private right. Nor are justices, under such circumstances, warranted in refusing as frivolous an application to state a case. *Reg. v. Pollard* (*Justices of the West Riding of Yorkshire*), 14 L. T. N. S. 599, —Q. B.

[2] 26 & 27 Vic. c. 97, enables cities, towns, and boroughs of 25,000 inhabitants and upwards to appoint stipendiary magistrates. Sect. 1 of 13 & 14 Car. 2, c. 12, is entirely repealed by sect. 1 of 35 Geo. 3, c. 101; and it is therefore no longer necessary, in case of a removal of a pauper, that one of the removing justices should be of the quorum. *Reg. v. Llangian* (*Overseers*), 10 Jur. N. S. 16; 11 W. R. 776; 8 L. T. N. S. 422,—Q. B. The mayor of a borough is not a justice of the quorum. *Id.*

[3] Two informations were laid against a party, one charging him with the rescue of a person out of lawful custody, and the other with an assault on two police constables; before the petty sessions, the first of these informations was withdrawn: this was held ground of objection to proceed on the second. *Galliard v. Laxton*, 2 B. & S. 363. Although under 5 Geo. 4, c. 83, s. 4, there must be a running away and deserting a wife or child, and a chargeability to the parish, yet it is sufficient, under 11 & 12 Vic. c. 43, s. 11, if the information is laid within six months of the chargeability, although the running away took place more than six months before. *Reeve v. Yeates*, 1 H. & C. 435. Sect. 24, 2 & 3 Vic. c. 71, must be read with sect. 66, 2 & 3 Vic. c. 47, and so construed, it applies only to street offences, and not to property in a house, which is

(D) *Attendance of Attorney.*

(E) *Orders and Warrants of.*[1]

(F) *Must abstain from adjudicating where he has Interest.*[2]

(G) *May be compelled to perform Duty by Rule of Court.*[3]

(H) *Clerks to Justices.*[4]

II. Action against.[5]

JUSTICES' Clerks. *See supra.*

JUSTIFIABLE Homicide. *See post,* Murder.

JUVENILE Offenders, Trial of. 10 & 11 Vic. c. 82; as to Reformatories, 17 & 18 *id.* c. 86; 18 & 19 *id.* c. 87; 25 *id.* c. 18; punishment of, 25 & 26 *id.* c. 18.

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suspected of being stolen. *Semble*, the term "brought," would be satisfied by the defendant appearing on summons. *Hadley v. Perks*, 1 L. R. 1 Q. B. 144; 35 L. J. M. C. 77.

[1] In issuing a distress warrant to enforce a rate, justices act merely ministerially: such a proceeding is not, therefore, within the meaning of section 11, which limits the time for lodging a complaint or information to six months from the time when the matter of the complaint arose. Section 11 applies only to cases where justices may make an order for payment of money, &c. *Sweetman v. Guest*, 3 L. R. 3 Q. B. 262; 37 L. J. M. C. 59; 18 L. T. 52. *Semble*, that upon application for such a warrant of distress as above mentioned, the justices may state a case for the opinion of the court under 20 & 21 Vic. c. 43, s. 2. *Id.*

[2] Any direct pecuniary interest, however small, in the subject-matter of inquiry, disqualifies a justice from acting judicially in the matter, but the mere possibility of bias in favour of one of the parties does not, *ipso facto*, avoid the justice's decision. *R. v. Rand*, 35 L. J. M. C. 157; 1 L. R. Q. B. 230. But see *Wildes v. Russell*, 1 L. R. C. P.; 35 L. J. M. C. 241. Justices, however slight their interest in an inquiry, should abstain from acting. *R. v. Hammond*, 9 L. J. N. S. 423. Even if only officially connected with the subject. *R. v. Allen*, 33 L. J. N. S. 98. *Wakefield Board of Health v. The West Riding*, 35 L. J. M. C. 69. A borough magistrate of the watch committee is not disqualified from adjudicating upon an information instituted with the sanction of such watch committee, even though the fine imposed goes into the borough fund. *Reg. v. Pettitmangin*, 9 L. T. N. S. 683.

[3] A rule calling on justices to show cause why a case should not be stated was made absolute, nothing being said about costs:—*Held*, that the party applying was not entitled to costs on taxing the costs of the case. *Wakefield Local Board of Health v. West Riding and Grimsby Railway Company*, 6 B. & S. 794. Justices are not bound to state a case when the application discloses no point on which a case ought to be granted. *Reg. v. Rutlandshire (Justices)*, 13 L. T. N. S. 722. A magistrate is not justified in refusing to entertain a charge against a man for deserting his wife and children made by the assistant overseer, because the proceedings have not been taken by direction of the board of guardians. *R. v. Mirehouse*, 32 L. J. M. C. 90. *R. v. Boteler*, 4 B. & S. 59; 33 L. J. M. C. 101.

[4] An order under 5 & 6 Vic. c. 109, s. 17, and 12 & 13 Vic. c. 20, s. 2, on overseers, requiring them to pay a sum of money to A., the superintendent of police, for fees due to him, is not supported by evidence that the fees were those really due to the clerk of the justices in vagrant cases, and had been paid in the first instance to him by the superintendent, who sought the order as a means of reimbursing himself, and therefore justices are not authorised to enforce such an order. *Neithrop (Overseers) v. Whidcoat*, 9 L. T. N. S. 383.—Q. B.

[5] Justices are not subject to action if they honestly, though erroneously, decided that an objection to the validity of a church-rate made at the hearing of a complaint for non-payment of arrears is not made *bonâ fide*, and proceed to adjudicate and issue their warrant to enforce payment. *Pease v. Chaytor*, 9 Jur. N. S. 664; 32 L. J. M. C. 121; 11 W. R. 563; 8 L. T. N. S. 613.—Q. B. Where a man was arrested by a constable under the direction of a county inspector of constabulary, and taken before a magistrate, before whom an information was sworn, asking for the further detention of the prisoner, and the prisoner was accordingly detained:—*Held*, that the fact of taking the information with the knowledge

K.

KILLING. *See post*, Murder.

L.

LABOUR, Regulating Hours of—Children, Young Persons, and Women. *See* 30 & 31 Vic. c. 116.

LABOURING Classes' Dwellings. 29 & 30 Vic. c. 28, amended ; 30 & 31 id. 128 ; 31 & 32 id. c. 130, extended to Scotland ; 30 & 31 id. c. 28, s. 4.

LABOURERS. *See post*, Master and Servant.

LACHES. *See post*, Negligence.

LANCASTER, Palatine Court of. *See post*, Palatine Court.

LAND, Abstract of Title.[1] 1 Abr. p. 63.

Improvement of. 27 & 28 Vic. c. 114.

Registering Title to, Transfer of. 25 & 26 Vic. c. 53; *id.* 67.

Tax. *See* also Covenant; *post*, Landlord and Tenant; Land Tax ; Lease.

LAND Registration. Gen. Order, 35 L. J. p. 1. *See* 35 Bea. 443.

LANDLORD and TENANT. 5 Abr. 296. *See* County Courts; Covenant; Distress; Ejectment; Encroachments; Fixtures; Lease; Notice to Quit; Trespass; Use and Occupation.

I. Relative Situation of ; how Created.

(A) *By Lease. See* Lease.

(B) *By Agreement for Lease, or imperfect Demise*, p. 282.

II. Relative to the particular Kind of Tenancy.

(A) *Tenancy from Year to Year*, p. 282.

(B) *For less Term, and at Will*, p. 283.

III. Of the Tenant being Estopped from Denying the Title of his Landlord, p. 283.

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that the prisoner would be detained did not render the magistrate, acting without malice, liable to an action for false imprisonment. *Donohoe v. Thompson*, 15 L. T. N. S. 131.—Ir. C. P. To an action for assault and false imprisonment against a justice, it is not sufficient to plead that defendant was a justice of the peace, and did the acts complained of in the execution of his duty, as such, within his jurisdiction, and in respect of matters over which he had jurisdiction. The plea should set out the facts on which he relies for giving him jurisdiction over the subject-matter. *Donahoe v. Keogh*, C. P. 17, Ir. Com. Law Rep. 39.

[1] The judge in equity appointed to hear applications under the 25 & 26 Vic. c. 53, is bound to hear a case presented to him although the application be *ex parte*, but he may before deciding the point require notice to be served on any person he may think proper. *In re Drew's Estate*, 1 L. R. Ch. Ap. 126.

IV. Rights of the Tenant.

(A) *As to Quiet Enjoyment*, p. 283.

V. Relative to the Payment of Rent, Rates, and Taxes, p. 283.

VI. „ Repairs, and State of Premises demised, p. 284.

VII. Of Away-going Crops, Tillages, &c., and Agricultural Contracts, p. 284.

VIII. Dissolution of Tenancy, p. 285.

IX. Actions by and against, p. 285.

I. Relative Situation of; how Created.

(B) *By Agreement for Lease, or imperfect Demise.*[1]

II. Relative to the particular Kind of Tenancy.

(A) *Tenancy from Year to Year, holding over after End of Lease.*[2]

[1] An agreement for a lease, in order to be sufficient within the Statute of Frauds, must state the property, the price paid, and the interest to be parted with. *Dolling v. Evans*, 15 W. R. 394. *Nunn v. Fabian*, 1 L. R. Ch. 35; 35 L. J. Ch. 140. An instrument is not a demise, although it contains the usual words of demise, if its contents show that such was not the intention of the parties. *Taylor v. Caldwell*, 3 B. & S. 826. An agreement to grant a lease contains an implied undertaking on the part of the intended lessor that he has title to grant such lease; and if he has not, he is liable to an action at the suit of the intended lessee. *Stranks v. St. John*, 36 L. J. C. P. 118; 2 L. R. C. P. 376. An agreement for a tenancy in these terms, "Mr. T. engages to complete the whole work necessary by the 14th June next." Then followed an enumeration of the matters to be done by T.; and the agreement concluded, "In consideration of these conditions being fulfilled, Mr. M. engages to take the house, No. 51 B. Park, for three years, at the annual rent of 130*l.* to be paid quarterly. Rent to begin from Midsummer next:"—*Held*, that the completion of the "work necessary" by the day named for that purpose was a condition precedent to the landlord's right to sue M. for not becoming tenant. *Tidey v. Mollett*, 16 C. B. N. S. 298; 10 Jur. N. S. 800; 33 L. J. C. P. 235; 10 L. T. N. S. 380. A., an owner of lace machines, paid 12*s.* a-week to B. for permission to place the machines in a room in B.'s factory, and for free ingress and egress to the room for himself and workmen for the purpose of working and inspecting the machines. B. supplied the necessary steam-power for working the machines, payment for which was included in the above sum:—*Held*, that there was no demise to A. of any part of the room, and no relation of landlord and tenant created between him and B. *Handcock v. Austin*, 14 C. B. N. S. 634; 32 L. J. C. P. 252. An option given to a tenant to call for an extended lease, will pass to his assignees in bankruptcy, and may by them be assigned to a purchaser. *Buckland v. Papillon*, 1 L. R. Eq. 477; 12 Jur. N. S. 155; 14 W. R. 380; 13 L. T. N. S. 736. Affirmed on appeal, 12 Jur. N. S. 992; 15 W. R. 92; 15 L. T. N. S. 378.—C. But such would not have been the case if the tenant had been restrained from alienation. *Id.*

[2] A renting of a tenement for an indefinite period, and an occupation for a year, constitute a tenancy for a year. *Reg. v. St. Giles*, 33 L. J. M. C. 3; 9 L. T. N. S. 411; 33 L. J. M. C. 3. Such a tenancy is not to be considered as a continuous tenancy, but as recommencing every year. *Gandy v. Jubber*, 10 Jur. N. S. 652; 33 L. J. Q. B. 151. A tenant from year to year, equally with a tenant having a larger interest, is bound to make proper inquiries into his landlord's title, and he is affected with the consequences of not doing so. *Wilson v. Hart*, 12 Jur. N. S. 460; 14 L. T. N. S. 499.—L. J. A. agrees to let and B. take a cottage for three months from 29th December, at a yearly rent of 18*l.*, the first monthly payment to be made 25th January, free from all taxes, which are to be paid by the tenant, and allowed out of the rent. Three months' notice to quit from either party to be sufficient. B. occupied for eighteen months:—*Held*, a tenancy from year to year, so as to give the tenant a settlement under 6 Geo. 4, c. 57, s. 2. *Paddington v. Willesden*, 9 Jur. N. S. 874; 32 L. J. M. C. 109; 11 W. R. 425; 7 L. T. N. S. 784.—Q. B. Where a lessee, after the expiration of his lease, remains in possession and pays rent, it is a question for the jury upon what terms his tenancy con-

(B) *For less than One Year, and at Will, Stamp required.*[1]

III. Of the Tenant being Estopped from Denying the Title of his Landlord.[2]

IV. Rights of the Tenant.

(A) *As to Quiet Enjoyment.*[3]

V. Relative to the Payment of Rent, Rates, and Taxes.[4]

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tinues. *Oakley v. Monck*, 4 H. & C. 251; 1 L. R. Exch. 159; 35 L. J. Exch. 87; 14 W. R. 406; 14 L. T. N. S. 20.—Ex. Ch. *Francis v. Minton*, 2 L. R. C. B. 543; 36 L. J. C. P. 201. A defendant held premises under a lease, with a covenant to keep and yield them up in repair. At the expiration of the lease, at Christmas 1863, the premises were dilapidated to an amount fixed by the jury at 22*l*. The plaintiff (the reversioner) had before this time made a verbal agreement with a third person to grant him a lease for a long term, and he at once proceeded to pull down the premises:—*Held*, that the plaintiff was, notwithstanding, entitled to recover substantial damages. *Rawlings v. Morgan*, 18 C. B. N. S. 776; 11 Jur. N. S. 564; 34 L. J. C. P. 185; 13 W. R. 746; 12 L. T. N. S. 348.

[1] By 28 & 29 Vic. c. 96, s. 5, any agreement or memorandum for the letting of a dwelling-house or tenement, or part of a dwelling-house or tenement, for any period less than a year, at a rent payable weekly or monthly, and not exceeding the rate of 3*s*. 6*d*. per week, shall be chargeable with the stamp duty of 1*d*. only in lieu of any other stamp duty now (5th July, 1865) chargeable on any such agreement or memorandum. A., having been in possession of a house and land adjoining, as tenant at will to the lord of a manor, was told by a subsequent lord that he must leave. On his refusal to do so, a writ of ejectment was served upon him; it was then verbally arranged that A. should give up part of the land, and retain the house and remaining land during the life of himself and wife:—*Held*, that these acts amounted to a determination of the tenancy at will, and as a new tenancy at will was thereby created, the Statute of Limitations, 3 & 4 Wm. 4, c. 27, ss. 7, 10, and it began to run from that time, and not from the date of the original tenancy. *Locke v. Matthews*, 13 C. B. N. S. 753. See *Thornton v. Thornton*, 4 Giff. 519.

[2] A tenant is estopped not only from disputing his immediate landlord's title but the title of the party through whom his landlord claims. *London and North-Western Railway v. West*, 36 L. J. C. P. 245; Q. & R. C. P. 553. See *Gibbons v. Buckland*, 32 L. J. Ex. 156; 1 H. & C. 736. The defendant, a lessee, desiring to secure his premises for himself at the end of his lease, and being a bankrupt without a certificate, procured a friend to take the conveyance as trustee for him. This conveyance showed the legal estate to be outstanding in a person who could not be found. The defendant continued to occupy. The plaintiffs, the creditors' assignees, becoming aware of the circumstances, induced the trustee to convey his interest to them and forced the defendant to attorn to them, and brought ejectment:—*Held*, that the plaintiffs under the above circumstances had a sufficient title. *Cooper v. Lands*, 14 L. T. N. S. 287, C. P.

[3] In a contract for a demise of land, a promise of quiet enjoyment during the term is implied by law. *Hall v. City of London Brewery Company*, 2 B. & S. 737; 9 Jur. N. S. 18; 31 L. J. Q. B. 257. A declaration for breach of a covenant or contract for quiet enjoyment must allege an eviction by a person claiming title paramount. *Ib.* By a memorandum, A. agreed to let, and B. agreed to take, for one year, and thence from year to year, premises; and A. agreed when required by B. to grant a lease of the premises for the remainder which shall be unexpired of the term and interest therein of A., wanting ten days, subject to the conditions and covenants under and upon which he holds the same:—*Held*, that an implied warranty for quiet enjoyment of the premises mentioned in the agreement determined with A.'s interest, and that B., on being evicted by the reversioner, could not maintain an action against A. on such implied warranty after the expiration of his interest. *Penford v. Abbott*, 9 Jur. N. S. 517; 32 L. J. Q. B. 67.

[4] A lessee of mines of ironstone, coals, and other minerals, for a term of thirty years, to be computed from March, 1839, demised the same, in November, 1846, to the defendant for twenty-three years, reserving a royalty upon the ore and coal raised by him, or an annual sum in lieu thereof, if the royalties in any year should not amount to that sum; with power to the lessee to distrain for the rents, reservations, &c.; and with liberty to the defendant, during the demise, to use, jointly with the lessee, a railway then on the land demised; the defendant covenanting to repair the same or to do so jointly with others who might use it, he having leave to divert it at his own expense if he thought fit. The lessee, during the demise, assigned to the plaintiff "the rents, reservations, and royalties, and all his other the estate, right

VI. Relative to Repairs, and State of Premises demised.[1]

VII. Of Away-going Crops, Tillages, Agricultural Contracts.[2]

of, in, or in respect of the demised premises, and the benefit of the covenants in the lease contained." In an action by the plaintiff to recover arrears in lieu of royalties accrued since the assignment:—*Held*, that by the deed of the lessee in 1846, a rent was created, and not a mere covenant in gross; that such rent was assignable, and that the plaintiff, as assignee, could sue the defendant for such rent. *Williams v. Hayward*, 1 El. & El. 1040:—*Held*, also, that the fact, that the defendant had been prevented by the plaintiff from using the railway, did not constitute an eviction, so as to disentitle the plaintiff to the rent, the use of the railway being an easement, and not part of the demise. *Id.* B. leased a farm to A. for fourteen years by deed, reserving rent payable quarterly. The lease contained various clauses by which A. and B. agreed to do certain things, and concluded with the following clause: "And the landlord further agrees and orders that K., or his appointed agent, is to receive all rents from the tenant at all times when it becomes due during the term hereby granted, and his receipt to be a full and sufficient discharge from all liability:"—*Held*, that K., having no interest in the rent, the agreement or authority for him to receive it was revocable. *Venning v. Bray*, 2 B. & S. 502. Lease by indenture executed by both lessor and lessee of a large tract of waste land; rent in arrear, and ejectment for recovery thereof. Plea in bar, that at the time of making the lease, other persons named were in possession of certain parcels of the demised premises, claiming to be owners in fee, and that defendant did not, and could not ever get possession. Replication, that defendant was estopped by the indenture from such a defence. Demurrer:—*Held*, that the replication was good. That the defence was equivalent to a plea of eviction by title paramount, and that the rent was apportionable and recoverable in this action under 23 & 24 Vic. c. 154, s. 44. *The Irish Society v. Tyrrell*, 16 Ir. C. L. R. 249.

[1] In an action against a tenant for not leaving premises in repair, evidence as to a prior promise on the part of the lessor to put them in repair is not admissible, and it would be a misdirection to tell the jury to have regard to such promises: but they may measure the extent of the repairs to be done by the age and class of the premises. *Haldane v. Newcomb*, 12 W. R. 135; 9 L. T. N. S. 420.—C. Assignees of G., a bankrupt, sued the defendant as executor of J. H. A count stated that R. H. demised premises to G., and covenanted to put all the premises forthwith in repair, and during the term maintain in repair, the main walls and the steam-engines, by the fair and reasonable wear and usage thereof; that the reversion became vested in J. H.; and that though R. H. had not put into repair, J. H. had not done so, or maintained in repair according to the covenant. To the first breach, for not putting in repair, the defendant pleaded, first, that a reasonable time for performance elapsed in the time of R. H., and he broke the covenant; secondly, that not only was this so, but that G. brought an action against J. H. and R. as executors of R. H., for such breach, and recovered compensation:—*Held*, that there could be but one breach of the covenant as to putting in repair, and that as such breach occurred in the time of R. H. these pleas were good. *Coward v. Gregory*, 12 Jur. N. S. 1000; 36 L. J. C. P. 1; 15 W. R. 170; 15 L. T. N. S. 279. The benefit of a covenant to repair in a joint demise by tenants in common runs with the entire reversion only, and therefore the representatives of all the tenants in common on a lease so jointly made by them must join in suing for a breach of such covenant. *Thompson v. Hakewell*, 19 C. B. N. S. 713; 11 Jur. N. S. 732; 35 L. J. C. P. 18; 13 L. T. N. S. 289. Upon the letting of a furnished house for immediate occupation, with an express condition that it is fit for occupation, if it is not so, and is at once given up on that account, the landlord cannot recover either the rent or for use and occupation. *Campbell v. Wenlock*, 4 F. & F. 716. See *Smith v. Marrable*, 11 M. & W. 5. *Sutton v. Temple*, 12 *id.* 52. But non performance by a landlord of repairs, whereby premises unfit for profitable occupation, and defendant quits on that ground is no defence. *Surplice v. Farnsworth*, 7 M. & G. 576.

[2] *Primâ facie* the landlord is bound to pay the outgoing tenant for tillages, and the mere fact of the incoming tenant entering upon the land does not render him liable to do so; but it is a question of fact whether the contract between the outgoing tenant and the landlord subsists, or a new contract has been entered into with the incoming tenant. *Codd v. Brown*, 15 L. T. N. S. 536.—C. P. The outgoing tenant's remedy for tenant right is against the landlord, and not against the incoming tenant, unless by virtue of an agreement between the parties to that effect. *Sucksmith v. Wilson*, 4 F. & F. 1083. An agreement that an outgoing tenant shall be paid for tillages on the expiration of his tenancy is not inconsistent with the terms of a tenancy from year to year. *Brocklington v. Saunders*, 13 W. R. 46.—Q. B. A farm lease contained a covenant by the lessee that "he should not nor would, during the last year of the term thereby granted, sell or remove from the said farm and lands any of the hay, straw, and fodder, which should arise and grow on the said farm and lands:"—*Held*, that the prohibition was not restricted to hay, straw, and fodder,

VIII. Dissolution of Tenancy.[1]

IX. Actions by and against.[2]

LAND-TAX.[3] 5 Ab. 304. 4 & 5 Wm. 4, c. 60; Redemption, 16 & 17 Vic. c. 74, s. 17; Commissioners, 30 & 31 id. c. 51.

LANDS Clauses Consolidation Act. 1 Abr. 456. *See ante*, Compensation, and *post*, Railways.

LARCENY. 5 Ab. 311.

I. In General.

(A) *What may be the subject of Larceny*, p. 286.

(B) *Of the* Animus Furandi, p. 286.

(C) *Of the Taking*, p. 286.

(D) *Of Larceny by Bailees*, p. 286.

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(F) *Attempts to Commit, and Proceedings incident thereto*, p. 287.

(G) *Several Counts for Distinct Acts of Taking*, p. 287.

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which arose and grew on the farm in the last year of the term, but extended to that which had arisen and grown at any time during the term. *Gale v. Bates*, 3 H. & C. 84. An agreement for an agricultural lease contained a stipulation that the tenant should perform each year for the landlord at the rate of one day's steam-work with two horses and one proper person for every 50*l.* of rent when required (except at hay and corn harvest), without being paid for the same. In ejectmemt for a forfeiture:—*Held*, that the work thus to be performed meant any work for which teams are generally used, and therefore included drawing coals to the palace of the landlord. *Marlborough* (*Duke*) *v. Osborn*, 5 B. & S. 67.

[1] A lease for twenty-one years, determinable at the end of seven or fourteen, if the parties so think fit, is not determinable without the joint assent of lessor and lessee. *Fowell v. Tranter*, 3 H. & C. 458.

[2] In an action for breach of a contract to let rooms, the defendant may justify such breach by the fact that the plaintiff intended to use the rooms for illegal purposes, whether at the time of refusing to perform the contract he assigned or really acted upon such intended use as a reason for such refusal or not. *Cowan v. Milbourn*, 36 L. J. Exch. 124; 2 L. R. Exch. 230; 15 W. R. 750; 16 L. T. N. S. 290. In a declaration on an agreement between the plaintiff and the defendant, that the defendant would take a house of the plaintiff and execute a lease for the same term as the plaintiff held, less ten days, an averment that the plaintiff had accepted the defendant as tenant, and had tendered him a lease for his execution, is sufficient, although there was no averment of the plaintiff's readiness and willingness to grant the lease. *Collins v. Willmott*, 13 W. R. 204; 11 L. T. N. S. 340.—Q. B. In ejectment by an administrator, to recover possession of land leased to the intestate, it was proved that the lease had been burnt, and then that the intestate had been in possession, and had paid rent:—*Held*, that the evidence of the lease was sufficient to entitle the administrator to recover. *Metters v. Brown*, 1 H. & C. 686; 9 Jur. N. S. 416; 32 L. J. Ex. 138; 7 L. T. N. S. 795. One who occupies as his own land belonging to another, and before the expiration of twenty years becomes tenant to the latter of land adjacent to the land so occupied, does not thereby change the character of his possession, but can, whilst he remains tenant, acquire, as against his landlord, a prescriptive title to the land first occupied by him. *Dixon v. Baty*, 1 Law Rep. Ex. 259. A landlord having given his tenant and subtenant a week's notice to quit, entered a plaint against them under 19 & 20 Vic. c. 108, s. 50, to recover possession of the premises, and the county-court judge ordered that possession be delivered up on a day named, which was done. The landlord afterwards sued the sub-tenant in a superior court, and declared in the form of an action for mesne profits, to which the defendant pleaded not guilty:—*Held*, that the order of the county-court judge was not conclusive to the plaintiff's right of possession. *Campbell v. Loader*, 3 H. & C. 520; 11 Jur. N. S. 286; 34 L. J. Exch. 50; 13 W. R. 348; 11 L. T. N. S. 608. An order of a county-court judge is not analogous to a judgment in ejectment, so as to entitle a landlord to maintain an action for mesne profits. *Id.*

[3] The proviso in 38 Geo. 3, c. 5, s. 25, exempting hospitals from land-tax, applies only to hospitals and sites of hospitals founded before the passing of the 38 Geo. 3, c. 60, the act by which the former act was made perpetual. *Colchester* (*Lord*) *v. Kewney*, 36 L. J. Exch. 172; 16 L. T. N.

II. Of the Indictment, p. 287.

III. Of Particular Larcenies, p. 287.

I. In General.

(A) *What may be the subject of Larceny.*[1]

(B) *Of the* Animus Furandi.[2]

(C) *Of the Taking.*[3]

(D) *Of Larceny by Bailees.*[4]

S. 463; 2 L. R. Exch. 253; 15 W. R. 930; 4 H. L. C. 445. The husband of a lady entitled to redeemed land tax, assigned the same by a duly registered deed to secure a sum less than the value of the land-tax, reserving the right of redemption to himself. The wife survived:—*Held*, that the husband had only reduced the land-tax into possession to the extent of the mortgage, and the wife surviving was entitled to the residue. *Pigott v. Pigott*, 37 L. J. 116; 16 L. T. 766; 4 L. R. Eq. 549. A person having a partial interest, redeemed the land-tax on three several tenements, by one contract and at one price:—*Held*, that the three charges were not consolidated so as to give him one aggregate charge on all tenements. *Cox v. Coventon*, 31 Beav. 378.

[1] Young pheasants hatched by a hen, and under the care of the hen, in a coop, in a field at a distance from a dwelling-house, are the subjects of larceny. *Reg. v. Cory*, 10 Cox, C. C. 23. *R. v. Shickle*, 38 L. J. M. C. 21.

[2] A servant who by the direction of his mistress removes the property of his master, and elopes with his mistress, *animo adulterii*, taking the property, is guilty of larceny. *Reg. v. John Mutters*, 34 L. J. M. C. 54; 10 Cox, C. C. 50. *See* 8 L. T. 334–489. An indictment against a farmer for stealing sheep entrusted to him for agistment, and which he had sold, concealing for upwards of a month the fact of sale, there being some evidence that he had, or might have supposed that he had, some implied authority to sell, or that the prosecutor would not object to it if he realised a good price, the jury were directed that the question was, whether at the time of the sale the prisoner had any reason to suppose that he might sell. *Reg. v. Leppard*, 4 F. & F. 51. Distinction between larceny and mere fraud: in the former the property is not parted with by the owner, in the latter it is. Circumstances under which a shopkeeper was held not to have parted with the property in change, which she had placed on the counter, which was taken away without giving full value, and the party was convicted of larceny. *Reg. v. M'Kale*, 1 L. R. C. C. R. 125; 37 L. J. M. C. 97; 28 L. T. 335; 16 W. R. 800.

[3] A prosecutor found a cheque, and being unable to read, showed it to the prisoner. The prisoner told him that it was only an old cheque of the Royal British Bank, and kept it. He afterwards made excuses for not giving it up, withholding it in the hope of getting the reward that might be offered:—*Held*, not such a taking as was necessary to constitute larceny. *Reg. v. Gardiner*, 1 L. & C. C. C. 243; 9 Cox, C. C. 253. *See* 38 L. J. M. C. 8. To render the refusal of the finder of lost property to give it up to the owner, larceny, he must at the time of finding it have had reason to believe that the owner could be found. *Reg. v. Thurborn* observed upon. *Reg. v. Glyde*, 1 L. R. 1 C. C. R. 139; 37 L. J. M. C. 107; 18 L. T. 613. A lady wishing to get a railway-ticket (the price of which was 10*s.*) finding a crowd, asked the prisoner, who was near to the pay-place, to get a ticket for her, and handed him a sovereign to pay for it. He took the sovereign intending to steal it, and instead of getting the ticket ran away:—*Held*, a larceny at common law. *Reg. v. Thompson*, 9 Cox, C. C. 244, 1 L. & C. C. C. 225; 32 L. J. M. C. 53; 9 Cox, C. C. 232; 32 L. J. M. C. 57. A servant a day or two before her mistress's death got cashed a cheque drawn to her mistress's order, and which had come to her mistress's house in a letter, and when cashed purported to bear her mistress's indorsement: and after cashing it she applied the greater part of it to a purpose which probably was directed by her mistress, but had retained a small surplus, and when taxed with it, just after her mistress's death, she denied the receipt of the cheque, the indorsement on which was believed not to be that of her mistress. The jury was directed that there was no evidence on which they could properly convict the prisoner for stealing the cheque, even if there was any on which they could have convicted for embezzling the surplus. *Reg. v. Slingsby*, 4 F. & F. 61. *See* 37 L. J. M. C. 97.

[4] A carrier was employed by the prosecutor to deliver in his (the prisoner's) cart a boat's cargo of coals to persons named in a list, to whom only he was authorised to deliver them, and, having fraudulently sold some of the coals, and appropriated the proceeds, is properly convicted of larceny as a bailee, within 24 & 25 Vic. c. 96, s. 3. *Reg. v. Davies*, 14 W. R. 679; 14 L. T. N. S. 491.—C. C. R. On an indictment for stealing sheep, it appeared that the prosecutor left the sheep with the prisoner to keep for him. The prisoner sold them, and

(E) *Of recent Possession.*[1]

(F) *Attempts to Commit, and Proceedings incidental thereto.*[2]

(G) *Several Counts for Distinct Acts of Taking.*[3]

II. Of the Indictment, and Proceedings incident thereto.[4]

III. Of particular Larcenies.[5]

LAW LIST.[6]

concealed the sale. The jury were told, that if the prisoner sold them without any reason to suppose that he had authority to sell, he was guilty, otherwise not so. *Reg. v. Lippard*, 4 F. & F. N. P. Cas. 51. A servant's duty was to give out materials to be wrought up, and pay the workmen when the work was finished, and for this purpose he received cash from his masters, and at the end of each week he accounted with them for sums so received and paid. The cash was kept by him, but he was not authorised to apply the money in any other way. He paid C. 13*s.* and fraudulently charged his employers as having paid 14*s.* 8*d.* and appropriated the 1*s.* 8*d.* to his own use;—*Held*, to amount to larceny. *Reg. v. Low*, 10 Cox, C. C. 168; 14 W. R. 286; 13 L. T. N. S. 642.—C. C. R. But when a porter was employed by the vendor of goods to deliver them to the vendee, but had no authority to receive the money for them. The vendee, however, voluntarily and without solicitation, paid the porter for the goods. The porter came back to the vendee, and pointed out that he had been paid short, and received the balance. He subsequently invested the money to his own use:—*Held*, that a conviction for larceny was not sustainable. *Reg. v. Wheeler*, 14 W. R. 848.—Ir. C. C. R. *See* 10 Cox, C. C. 557.

[1] Recent possession of stolen property is evidence, either that the person in possession stole the property, or that he received it knowing it to have been stolen, according to the other circumstances of the case. *Reg. v. Langmead*, 1 L. & C. C. C. 427; 9 Cox, C. C. 464; 10 L. T. N. S. 350. *See* 17 L. T. 582.

[2] An indictment for an attempt to commit larceny, which charges the prisoner with attempting to steal "the goods and chattels of A.," without further specifying the goods intended to be stolen, is sufficiently certain. *Reg. v. Johnson*, 1 L. & C. C. C. 489; 10 Cox, C. C. 13.

[3] On an indictment for stealing fowls, in the first count laid on the 15th February, for stealing ten fowls, and in the third laid on the 13th February in the same year for stealing three fowls, the prosecutor was put to elect between the two occasions. *Reg. v. Lonsdale*, 4 F. & F. 56. A. was charged with stealing money, alleged to be the money of B. B. had received the money as the servant of an industrial co-operative society, for goods sold to members of the society, and he was accountable to the treasurer for the monies he received. A. was a member of the society, and had abstracted some money from a till under B.'s charge:—*Held*, sufficient possession of the money in B. to sustain a conviction for larceny against A. *Reg. v. Burgess*, 9 Cox, C. C. 302; 9 Jur. N. S. 582; 32 L. J. M. C. 185.

[4] An indictment under 24 & 25 Vic. c 95, s. 27, for stealing "valuable security," should be so described as to show it to be within the section. *Reg. v. Lowrie*, 36 L. J. M. C. 24; 1 L. R. C. C. R. 67. Wages received by a fellow-workman should be described as the property of the workmen for whom received, and not as of the masters. *The Queen v. Barnes*, 35 L. J. M. C. 204. If a person is apprehended in a borough for a larceny committed on the high seas, he may be tried for that larceny before the court of quarter sessions of the borough. *Reg. v. Peel*, 1 L. & C C. C. 231; 9 Cox, C. C. 220; 32 L. J. M. C. 65. Where a person steals property in one county and transmits it by rail to a person in another county, he may be tried in the latter county under this section, as the possession of the railway company is constructively his possession. *Reg. v. Rogers*, 1 L. R. C. C. R. 136; 37 L. J. M. C. 83; 18 L. T. 414.

[5] A workman by the desire of fellow-workmen in the same room, applies to the employer for payment in lump sum of all their wages, and is paid accordingly by their employer's cashier; he did not pay his fellows their portions of wages On an indictment for larceny, laying the property in the *employers*, he was convicted. Conviction quashed, the prisoner being the agent of his fellow-workmen and not of his employers. *Reg. v. Barnes*, L. R. 1 C. C. R. 45; 35 L. J. M. C. 204; 14 L. T. 601. On an indictment for stealing sheep, which had been stolen after the death of the late owner, there being no formal proof of a will or administration, but it appearing that the sheep were in charge of a shepherd, under the orders of a steward, who was under the order of the prosecutors, and took directions from and rendered accounts to them:—*Held*, that there was sufficient evidence of a possession in them which would sustain the indictment. *Reg. v. King*, 4 F. & F. 493, Crompton.

[6] Upon an indictment for obtaining money by a false pretence, made by the prisoner, "that he was an attorney," it is not necessary to prove the negative in any other way than by the production of the Law List, in which the prisoner's name does not appear as an attorney; the statute 23 & 24 Vic. c. 127, makes the Law List evidence, and shifts

LEASE. 5 Abr. 338. Leases (*under powers*), 12 & 13 Vic. c. 26; am. 13 *id.* c. 17; 23 & 24 *id.* 67; to facilitate granting of, 8 & 9 *id.* c. 124; 19 & 20 *id.* c. 120; am. 21 & 22 *id.* c. 77; by incumbents, 24 & 25 *id.* c. 105; 25 & 26 *id.* c. 52; and sales of settled estates, 19 & 26 *id.* c. 120; 21 & 22 *id.* c. 77. *See* Covenant; Fixtures; Landlord and Tenant; Trespass; Use and Occupation.

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I. Property in; who may Grant, and when by Deed.[1]

II. Of the Stamp.[2]

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the burden of proving its inaccuracy from the prosecution to the prisoner. *Reg. v. Wenham*, 10 Cox. Crim. Cas. 222.

[1] A lessor who has determined the term by re-entry for breach of covenant has no title to the lease as against the lessee. *Elworthy v. Sandford*, 3 H. & C. 330; 34 L. J. Ex. 42. A lease by an infant is not void, but voidable only, notwithstanding the rent reserved is not the best obtainable. *Slator v. Brady*, 14 Ir. Com. Law Rep. 61, Ex. As to confirmation of lease after age, *see Slator v. Trimble*, 14 Ir. C. L. R. 342, Q. B. Lease of nursery-ground by tenant for life, and a covenant to pay for the trees remaining at the end of the term. Lessor died, and remainderman, not knowing of the lease or the covenant, continued to receive the same rent for six years, when he terminated the tenancy by notice:—*Held*, the remainderman was not bound by the covenant of the tenant for life. *Oakley v. Monck*, Ex. 11 Jur. N. S. 376; 1 L. R. 159; 35 L. J. Ex. 87. Joint tenants may, by express stipulation, create the relationship of landlord and tenant between themselves, and to which the power of distress is incidental. *Cowper v. Fletcher*, 34 L. J. Q. B. 187; 12 L. T. N. S. 420. Therefore, three co-executors may agree that one shall hold land, devised to them in trust, at a fixed rent, and if the rent falls into arrear, he may be distrained upon in respect of it. *Id.* In a lease of a wife's fee-simple lands, executed by husband and wife, but not acknowledged by her under 3 & 4 Wm. 4, c. 74, and not containing any recital that she was to acknowledge the lease, sureties for the lessee may be sued by the executors of the wife to recover on the covenant, although, had the wife pleased, she might have avoided the lease. *Toler v. Slater*, 3 L. R. Q. B. 42; 37 L. J. 33. An unsealed agreement creating a present demise, void as a lease, by the 8 & 9 Vic. c. 106, s. 3, may still enure as an agreement. *Hayne v. Cummings*, 16 C. B. N. S. 421; 10 Jur. N. S. 773; 10 L. T. N. S. 341. S. P. *Tidey v. Molett*, 16 C. B. N. S. 298; 10 Jur. N. S. 800; 33 L. J. C. P. 235. *Bond v. Rosling*, 30 L. J. Q. B. 227; 1 B. & S. 371. *Rollason v. Leon*, 7 H. & W. 73; 31 J. L. Ex. 96. An agreement to grant a lease contains an implied undertaking on the part of the intended lessor that he has title to grant such lease; and if he has not he is liable to an action at the suit of the intended lessee. *Stranks v. St. John*, 36 L. J. C. P. 118.

[2] To bring a lease within the higher scale of duties the term must not only exceed thirty-five years, but the yearly rent must be payable for a term exceeding thirty-five years. *Pearson v. Commissioners of Inland Revenue*, 3 L. R. 3 Ex. 242; 37 L. J. 171; 18 L. T. 570.

III. Of the Execution, Re-entry, and Holding Over after End of Term.[1]

IV. Of the Construction and Termination of.[2]

V. Of the Term Granted.[3]

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[1] To an action on a covenant in a lease for years by the lessor, a plea that the lessee was tenant for a term of years, if he should so long live, and that the lease was never executed by the reversioner, is a bad plea. *How v. Greek*, 10 Jur. N. S. 1187; 34 L. J. Ex. 4; 13 W. R. 80; 11 L. T. N. S. 315. Entry is not necessary to the vesting of a term of years in the lessee; but for the purpose of maintaining an action of trespass the lessee must enter, since that action is founded on actual possession. *Harrison v. Blackburn*, 17 C. B. N. S. 678. Where a lessee, after the expiration of his lease, remains in possession and pays rent, it is a question for the jury upon what terms his tenancy continues. *Oakley v. Monck*, 3 H. & C. 706; 11 Jur. N. S. 376; 34 L. J. Ex. 137.

[2] A reservation in a lease of "the free running of water and soil coming from any other buildings and lands contiguous to the premises hereby demised in and through the sewers or watercourses made or to be made within, through, or under the said premises," extends to water and soil coming to and from,—though not actually first arising upon or out of,—the contiguous lands or buildings, but does not extend beyond such "water and soil" as are the products of the ordinary use of the land and buildings for habitation. *Chadwick v. Marsden*, 36 L. J. Ex. 177. In a demise of land, timber and timber-like trees were excepted from the demise; the tenant covenanted "to preserve, uphold, support, &c., the demised premises." In an action by the landlord on the covenant he cannot recover in respect of trees and timber-like trees cut and carried away by the tenant. *Allen v. Carver*, 15 Ir. C. L. Rep. 544. Declaration for breach of covenants contained in a farming lease dated the 24th of December, 1851, and made between the plaintiff of the first part, the defendant of the second part, and one Y. of the third part, whereby the plaintiff and Y. (so far only as they legally could or might, according only to their respective estates and interests) demised to the defendant a farm for a term of fourteen years from the 25th of March, 1851. Plea, that at the time of the execution of the deed the plaintiff was possessed of the premises for the residue of a term of years in case the plaintiff should so long live, and the reversion of the premises after the expiration of the estate of the plaintiff then was vested in Y., and that the indenture was never executed by Y. as his deed, and that there never was any demise by the plaintiff and Y. to the defendant of the premises, and that there never was any consideration for the execution of the indenture or of the defendant's part of the same:—*Held*, on demurrer, that the plea was bad, as it was expressly stated in the lease that the plaintiff and Y. demised so far only as they legally could or might, according only to their respective estates and interest, and that, therefore, the defendant had received the consideration for which he stipulated, viz., a lease for fourteen years, if the plaintiff should so long live. *How v. Greek*, 34 Law J. Rep. N. S. Ex. 4; 3 Hurls. & C. 391. A railway company being the owners in fee of a ship-yard, in which there was a "slip" for docking vessels, by deed demised the yard to plaintiff with the following reservation, "except and always reserved out of this demise the patent slip, and the machinery and apparatus connected therewith, and the site thereof, and the dues and payments payable for the use thereof; and unto the said company, their successors and assigns, officers, servants, and workmen, free access at all times to and from the said slip, for the purpose of working and using or repairing the same or otherwise:—*Held*, in an action of trespass, that this exception applied to a licensee of the company as well as to an assignee. *Metcalfe v. Westaway*, C. P. 17 C. B. N. S. 658. See further as to construction of special demises, *Madland v. Mackinnon*, H. & C. 607; 32 L. J. Ex. 49. *Hull v. Lund*, *id.* 113. A demise by deed for the term of three years, "determinable on a six months' previous notice to quit by either lessor or lessee, otherwise to continue from year to year until the term shall cease by notice to quit at the usual times," is a demise for three years certain, and the tenancy cannot be determined sooner than by a six months' notice ending with the third year. *Jones v. Nixon*, 31 Law J. Rep. N. S. Ex. 505; 1 Hurls. & C. 48. A lease for twenty-one years, expressed to be "determinable, nevertheless, in seven or fourteen years, if the said parties hereto shall so think fit," is determinable only by consent of both the parties, although it may have been their intention to give the option to either alone. *Fowell v. Franter*, 34 Law J. Rep. N. S. Ex. 6; *nom. Fowell v. Tranter*, 3 Hurls. & C. 458.

[3] A lease of a house was granted by S. to the lessee for twenty-one years from Christmas, 1856, determinable at the end of the first seven or fourteen years upon six months' notice by either party, with power of re-entry if the lessee assigned possession without the lessor's consent. In October, 1861, the lessee agreed in writing, without the lessor's consent, to sell his interest in the premises to the plaintiff, the terms of

VI. Of the Covenants of the Lease. *See ante*, Covenant.

VII. Of Assignment of the Lease.[1]

VIII. Of Forfeiture and Re-entry.[2]

IX. Of the Surrender of the Term.[3]

X. Remedies and Actions connected with.[4]

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which were that he was to pay 1800*l.* for the lessee's improvements, which sum was to be repaid to the plaintiff if he was ejected by the lessee in the first instance; and "if the lessor exercised the power of determining the lease at Christmas, 1863, and if the plaintiff then leaves the house," the sum of 1100*l.*, part of the 1800*l.*, was to be returned to the plaintiff. The lessor gave notice of determining the lease at Christmas, 1863, and subsequently granted a new lease at a largely increased rent to C., the aunt of the plaintiff, who had resided with him in the house since October, 1861, and with whom the plaintiff continued to reside in the house under the new lease, so that he did not actually and as a matter of fact leave the house:—*Held*, that the plaintiff was entitled to recover the 1100*l.*, inasmuch as the lease to C. was a new lease to a different person for a different term, and at a different rent from the original lease, and the plaintiff had not got the equivalent for which he bargained as a consideration for the 1100*l.*, as he had lost his interest in the house as tenant, which, by a reasonable construction, amounted to leaving the house. *Rideout v. Lucas*, 14 L. T. N. S. 738, Ex. Ch.

[1] Action on a covenant to repair by the assignee of the reversion of a lease granted in 1804 for the life of the grantor, and if he died within sixty years, for the term of sixty years from Midsummer, 1804, against the defendant as the executrix of an assignee of such lease. The defence was that the testator had parted with the lease long before his death, and in support of this the defendant relied on a lease which had been made by the testator in 1829, by which the testator demised the premises contained in the original lease of 1804 for a term which expired Midsummer, 1865, and which, therefore, comprised the whole of the term granted by the lease of 1804:—*Held*, that the lease by the defendant's testator operated as an assignment. *Beardmore v. Wilson*, 3 L. J. Q. B. 39.

[2] A lessee, under a lease containing a covenant not to assign, with a proviso for re-entry in case of breach, by executing a deed of assignment of all his personal property for the benefit of creditors, commits a breach of that covenant and forfeits his lease, although the deed of assignment be executed by him for the purposes and in accordance with the provisions of the 192nd and subsequent sections of the Bankruptcy Act, 1861, and be duly registered under the 197th section. *Holland v. Cole*, 31 Law J. Rep. N. S. Ex. 481; 1 Hurls. & C. 67. Where a lessee had forfeited his lease at law, but showed reasonable ground for belief that he had a good defence in equity, the landlord was restrained from proceeding to execution at law until the hearing of the cause. *North Staffordshire Steel, &c. Company v. Camoys*, 11 Jur. N. S. 555, L. J. As to leases under special circumstances, see *Pellatt v. Boosey*, 31 L. J. C. P. 281. *Ward v. Day*, 5 B. & S. 359; 4 *id.* 337; 33 L. J. Q. B. 254.

[3] The effect of the 4 Geo. 2, c. 28, s. 6, while it gives a lessee the right to surrender notwithstanding his contracts with his underlessee, leaves untouched the sub-interest, though it is merely an agreement for an underlease; and the effect of a new demise after the surrender for the residue of the original term is to make the new lessee the assignee of the reversion of the terms created by the surrenderor. *Cousins v. Phillips*, 3 H. & C. 892; 35 L. J. Ex. 84. A leasehold house was underlet for twenty-one years to P. by trustees. The trustees afterwards granted a fresh underlease to K. for twenty-one years, and sold the property by auction to a purchaser who had no notice of the underlease. P., after the sale, by deed, purported to surrender his interest to the trustees:—*Held*, that as the first lessee had not attorned to the second, the surrender was rightly made, and the purchaser must complete. *Edwards v. Wickwar*, 1 L. R. Eq. 403; 35 L. J. Ch. 309.

[4] The benefit of a covenant to repair in a joint demise by tenants in common runs with the entire reversion only; therefore, the representatives of all the tenants in common on a lease so jointly made by them must join in suing for a breach of such covenant. *Thompson v. Hakewell*, 25 L. J. C. P. 18. Specific performance of an agreement to take a lease of lands for the purpose of a tannery will not be enforced when the proposed lease contained the usual covenant against carrying on noxious trades, although the defendants had represented that they were about to conduct their business in a way which could not be open to objection on that score. *Reeves v. Greenwich Tanning Company*, 2 H. & M. 54. A. agreed to take from B. a lease of an unfinished house, containing covenants on the part of A. to repair and keep in repair. B. agreed to finish the house. The court declined compelling A. to take the lease, the house having been finished in such a defective manner as to make it unreasonable for A. to do so. *Tildesley v. Clarkson*, 30 Beav. 419.

LEASE and RELEASE. *See* 4 Vic. c. 21.

LEAVE and LICENSE, Plea of.[1]

LECTURE-ROOMS. *See* 9 & 10 Vic. c. 30.

LECTURES, Publication of. *See* 5 & 6 Wm. 4, c. 65.

LEGACY. 5 Abr. 55. *See* also Executors, 4 Ab. 360; *post*, Will.

I. When a Satisfaction or Extinguishment.[2]

II. Duty Payable on,[3] 8 & 9 Vic. c. 76; 16 & 17 Vic. c. 51.

LEGITIMACY, Declaration of.[4] 5 Abr. 36.

LETTERS, Property in.[5]

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[1] To an action for entering the plaintiff's land and breaking open his gate, the defendant pleaded as an equitable plea that a dispute had arisen between the plaintiff and defendant and other persons, whether there was a highway over the land; and, at the plaintiff's request in writing, signed by the plaintiff, R., the defendant, and the other persons, agreed that, without prejudice to the question of right, the way should remain open until R. and the defendant should come to a definite understanding as to the course to be pursued in trying the question:—*Held*, that the plea was no answer to the action either at law or equity. *Hyde v. Graham*, 1 H. & C. 593; 32 L. J. Ex. 27. So a count for cutting the plaintiff's trees, equitable defence that the trees had been sold to him by the plaintiff's ancestor, with permission to come on the land and cut them, and pay for them at a certain price, is a bad plea. *Wakley v. Froggett*, 9 Jur. N. S. 1248; 9 L. T. N. S. 340, Ex.

[2] A testator, by his will, executed in England and in the English form, gave legacies to the younger children of his deceased daughter. By a settlement of prior date made in the Scotch form upon his daughter's marriage, he had covenanted to pay to trustees a principal sum, to be divided, after the death of the parents, among the younger children of the marriage. The obligation was never satisfied in his lifetime, and no reference to it was contained in the will. The legacies were in excess of the portions which would have arisen from the settlement:—*Held*, that the testator placed himself *in loco parentis*, and the will being construed according to English law, the legacies were to be taken in satisfaction of the provisions contained in the settlement. *Campbell v. Campbell*, 1 L. R. Eq. 383; 35 L. J. Ch. 241; 13 L. T. N. S. 667.

[3] A direction to pay legacy and succession duty payable for the legacies given by the testator's will, "or in consequence of his death," includes the succession duty payable upon the succession of the next tenant for life to the settled estates. *Poulett (Earl) v. Hood*, 12 Jur. N. S. 85. Succession duty is not payable on legacies given by the will of a person domiciled in a foreign country. *Wallace v. Attorney-General. Jeves v. Shadwell*, 1 L. R. Ch. App. 1; 35 L. J. Ch. 124. *Attorney-General v. Rowe*, 1 H. & C. 31. *Attorney-General v. Kent*, 1 H. & C. 12; 31 L. J. Ex. 391. A donee of a power of appointment, having executed by will in favour of the persons who were to succeed in default of an appointment, so as to bring the subject of the appointment into the sum chargeable with the appointer's debts and legacies:—*Held*, that the legacy duty must be paid as upon a legacy from the appointor. *Attorney-General v. Brackenbury*, 1 H. & C. 782; 9 Jur. N. S. 257. By the Irish Legacy Duty Acts, legacies given for charitable purposes are exempt from duty:—*Held*, that such exemption does not extend to legacies absolute on the face of the will, but bound by a secret trust for charitable purposes. *Cullen v. The Attorney-General for Ireland.* 12 Jur. N. S. 531. The amount of legacy duty, being calculable from the time when probate is taken out, must be estimated upon the sum devolved by succession, with the addition of such sums as have accrued by way of interest in the interval. *Attorney-General v. Partington*, 10 Jur. N. S. 617; 33 L. J. Ex. 281.

[4] The object of 21 & 22 Vic. c. 93, was to enable persons by suit to establish legitimacy and the validity of marriages, and not to establish illegitimacy. *In re Chaplin*, 36 L. J. P. & M. 90; 16 L. T. 612; 15 W. R. 1048. In a proceeding under the Legitimacy Act, the case cannot be tried by a jury unless an issue has been raised. *Ryves v. the Attorney-General*, 35 L. & J. M. & P. 6. The 45th rule of the Divorce Court Rules, 1857, which directs that "every application for a new trial in respect of causes tried before a jury is to be lodged in the registry within a month from the day on which the cause was tried," is inapplicable where a motion is made for a new trial of issues in a suit under the Legitimacy Declaration Act, which have been tried at the assizes. *Watson v. the Attorney-General*, 35 L. J. M. & B. 7. Under 21 & 22 Vic. c. 93, though party resident out of the jurisdiction, cannot be compelled to give security for costs. *Shedden v. the Attorney-General*, 36 L. J. P. & M. 132.

[5] When the solicitor of a company writes a letter apparently on the behalf of the company, he has no such property in the letter as to entitle him to prevent its publication, although he swears that it was

LIBEL. *See* also Newspaper; Slander; Slander of Title.

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I. Against Individuals, and Publication of.

(A) *What amounts to in general.*[1]

(B) *Where contained in the Report of a Trial or Proceedings in Parliament.*[2]

written in his private capacity. *Howard v. Gunn*, 32 Beav. 462.

[1] A statement in writing that a person's mind is affected is *primâ facie* a libel. *Morgan v. Lingen*, 8 L. T. N. S. 800. Such a publication is malicious, unless made in discharge of a public or private duty arising out of a matter in which the person making it is concerned, and then made without malice. But if fairly warranted by any reasonable exigency, and honestly made, it is privileged. *Id. Semble*, that if a person falsely and maliciously disparages an article which another manufactures or vends, and special damage results therefrom, an action will lie, although in so doing no imputation is cast on the personal or professional character of the manufacturer or vendor. *Young v. Macrae*, 3 B. & S. 264; 9 Jur. N. S. 538; 32 L. J. Q. B. 6; 11 W. R. 63; 7 L. T. N. S. 354. A railway company published notice to the public, stating that the plaintiff had been convicted of an offence against their bye-laws, and fined a certain sum for penalty and costs, with the alternative of three weeks' imprisonment in case of non-payment. The period of alternative imprisonment fixed was, in fact, not three weeks, but a fortnight only:—*Held*, that the inaccuracy of the statement did not necessarily render it libellous, and that it was a question for the jury whether the statement was substantially true. *Alexander v. North Eastern Railway Company*, 11 Jur. N. S. 619; 34 L. J. Q. B. 152; 13 W. R. 651. A plaintiff declared upon a letter written by the defendant, in which it was alleged that the former had for many years, without cause, systematically done everything to annoy the latter, and had unnecessarily dragged him into the Court of Chancery, and put him to great expense:—*Held*, on demurrer, that the court could not so clearly see that the letter could not be libellous as to justify them in withdrawing the case from a jury. *Fray v Fray*, 17 C. B. N. S. 603; 35 L. J. C. P. 45. It is no libel to write of a physician that he has met homœopathists in consultation, though it is alleged that, in the opinion of the profession, meeting homœopathists in consultation is improper, and is against etiquette. Neither is it a libel, although alleged, in addition to the above, that meeting homœopathists is also disgraceful in the opinion of the profession. *Clay v. Roberts*, 9 Jur. N. S. 580; 11 W. R. 649; 8 L. T. N. S. 397, Ex.

[2] The privilege possessed by reporters of the proceedings in courts of justice, provided the reports are faithful or fair, although they may be derogatory or defamatory to individuals mentioned in them, extends to the writers of law-books fairly and honestly citing those reports. *Blake v. Ste-*

(C) *Where contained in the Report of a Meeting.*[1]

(D) „ „ *Critical Review of a Book or Artistic Performance, and Comments upon Matters of Public Interest.*[2]

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vens, 11 L. T. N. S. 543; 4 F. & F. 232. But reasonable care and diligence must be used to secure correctness in such citations. *Id.* In *Risk Allah v. Whitehurst*, 16 June, 1868, the C.J. Cockburn stated "that any, the most direct attack, may be made in the public newspaper on private character, where that character has become the subject of judicial investigation. If a man be brought into court, every publication in the kingdom may express an opinion on his guilt or innocence, even to the extent of declaring that the jury which acquitted him has decided wrongly. It is only necessary that the writer should act honestly and with a fair exercise of judgment." Action for libel brought against the proprietor of the *Times* newspaper for publishing a report of a debate in the House of Lords on a petition presented on the plaintiff's behalf, and for publishing a leading article commenting on the debate, and reiterating some of the statements made by the peers who took part in it. The jury found that the report was accurate and faithful, and the article a fair comment on a matter of public interest. Upon this finding his lordship directed a verdict for the defendants, and a rule for misdirection raised the question whether this ruling was right. The court said the main question for their decision was, whether a report in a public newspaper of a debate in either House of Parliament containing matter disparaging to the character of an individual which had been spoken of in debate was actionable at the suit of the party whose character was called in question. They were of opinion that it was not. Important as the question was, it came now for the first time before a court of law for decision. Numerous as were the instances in which the conduct and character of individuals had been called in question in Parliament during the many years parliamentary debates had been reported in the public journals, this was the first instance in which an action for libel, founded on a report of parliamentary debate, had come before a court of law. There was, therefore, a total absence of direct authority to guide them. There were indeed the dicta of judges having reference to the point in question, but they were conflicting and inconclusive, and might be said to be extra-judicial. Judgment for the defendants. *Wason v. Walter*, M. T. 1868, 32 L. J. Ex. 258. *See Dawson v. Duncan*, 26 L. J. Q. B. 184. Proceedings held in gaol before a registrar in bankruptcy upon the examination of a debtor in custody are judicial and in a public court. A fair report, therefore, of these proceedings is protected. *Ryalls v. Leader*, 1 L. R. Ex. 296; 12 Jur. N. S. 503; 35 L. J. Ex. 185; 14 W. R. 838; 14 L. T. N. S. 563. There is no restriction upon the publication of an accurate report of the proceedings of a court of justice on the ground of its affecting the character of third persons. *Id.*

[1] A., a commissioner of fisheries in Ireland, in a meeting of proprietors and persons interested, convened under 5 & 6 Vic. c. 106, to inquire into all matters relating to certain fisheries, charged a neighbouring magistrate with a violation of the fishery laws:—*Held*, that the occasion was privileged. *Bennett v. Barry*, 8 L. T. N. S. 857, Ir. C. P. *Pope v. Coates*, 16 Ir. Com. Law Rep. 156.

[2] A journalist criticising a scheme which has been submitted to the notice of the public, has no other or greater privileges than an ordinary individual; nor where he imputes base and sordid motives to the author of such scheme is he justified by his belief, however *bonâ fide*, that there are good grounds for such imputations. *Campbell v. Spottiswoode*, 3 B. & S. 769; 9 Jur. N. S. 1069; 32 L. J. Q. B. 185; 11 W. R. 569; 8 L. T. N. S. 201. S. C. at Nisi Prius, 3 F. & F. 421. A barrister, who, after becoming a member of parliament, was made Queen's counsel, and also a recorder, having been partly acquitted and partly censured by the benchers of his Inn, after an inquiry into his conduct, private as well as professional; and having afterwards, on a public platform, alluded to their sentence as one of acquittal; upon which they published their sentence, and he published a protest and a letter, in which he impugned their proceedings and decision as unjust. A person, in a legal review, published an article fairly setting forth these documents, with comments and observations, suggesting that he had obtained his appointment by parliamentary influence or services:—*Held*, that the matter of those appointments was a legitimate subject of public comment. *Seymour v. Butterworth*, 3 F. & F. 372:—*Held*, that even the private conduct of the plaintiff might, as tending to show whether he was a man of honour and integrity, be also legitimate subject of such comment; and that, as he had in a public speech alluded to all these matters, they were all legitimate subjects for such comments as were fair, and not, in substance, going beyond matters which were the subject of comment. *Id.* But when a newspaper imputed to the plaintiff, the proprietor and editor of Zadkiel's "Almanac," that not only was he connected with that foolish publication, but that he gulled the public by means of a magic ball of crystal, by which he pretended to tell what was going on in the other world, and that he took money for those profane acts, and made a good thing of it; there was a plea of justification that the libels were true in

(E) *Where contained in the course of Judicial Proceedings.*[1]

(F) *Of Privileged Communications.*[2]

substance and fact:—*Held*, that within the scope of fair discussion a public writer is not liable unless he writes unreasonably, recklessly, and maliciously. *Morrison v. Belcher*, 3 F. & F. 614. And immunity does not extend beyond the discussion of the published writings on public or undoubted acts of the plaintiff, and does not extend to the gratuitous assertion of matters of fact for which there is no foundation. *Id.*

[1] A party publishing a copy of a judgment does so at his peril; and if the judgment has been satisfied by payment before the publication, and he publishes it as an existing liability, he is liable in an action for libel; and if special damage has followed, in an action for a false representation. *M'Nally v. Oldham*, 8 L. T. N. S. 604, Ir. Q. B. Pending a suit, and after the time had expired for the defendants to file affidavits, an article appeared in a local newspaper commenting upon the persons who had made affidavits on behalf of the defendants, attributing to them falsehood, ignorance, and self-interest, and holding them up to public contempt and ignominy:—*Held*, that the article was a contempt of court, and the publisher of the newspaper was committed to prison. *Felkin v Herbert*, 10 Jur. N. S. 62; 33 L. J. Ch. 294; 9 L. T. N. S. 635. *M'Nally v. Oldham*, 16 Ir. Com. L. R. 298.

[2] No criticism on a person holding a public office, as that of a waywarden, is libellous, unless malice is shown. *Harle v. Catherall*, 14 L. T. N. S. 801. Nor commentary in a newspaper upon the conduct of magistrates in dismissing a charge. *Hibbins v. Lee*, 11 L. T. N. S. 541. It is the duty of a publisher to give up the name of the writer of any letter reflecting upon private character, or treating of private and not of public matters, that may appear in his newspaper. *Id.* A railway company published as a notice the conviction of plaintiff by justices of a breach of a bye-law, and the infliction of a penalty of 9*l.* 1*s.* 10*d.*, including costs, or three weeks' imprisonment. The costs were 8*l.* 1*s.* 10*d.*, and the alternative punishment fourteen days:—*Held*, on demurrer, that the notice was not necessarily libellous, and that it was for the jury to say whether the inaccuracy would have a different effect on the public than the literal truth. *Alexander v. North Eastern Railway Co.* Q. B. 34 L. J. N. S. 152. The conduct of a clergyman in the services of his church, and the uses to which he applied the vestry, are matters of public interest, which will render fair comments thereon in a newspaper privileged, which would be otherwise libellous. *Kelly v. Tinling*, Q. B. 14 W. R. 51. K., a member of the Royal Horticultural Society, hired F. as gardener on the recommendation of E., the manager of the society, E. being in the habit of recommending gardeners to members, though not part of his duty to do so. K. dismissed F., and wrote to E. that "F. was extremely violent, came towards me several times with an open clasp-knife in his hand, and eyes starting from the sockets with rage, a perfect raving madman." The jury found that the letter was libellous, but written *bonâ fide* and not maliciously:—*Held*, that the letter was not a privileged communication, as, even if a privilege could possibly exist in such a case, the statement went beyond what the occasion would justify. *Fryer v. Kinnersly*, 12 W. R. 155; 9 L. T. N. S. 415, C. P. But a policy-holder having, in the course of a dispute with an insurance company, published a pamphlet accusing the directors of fraud, and they having published a pamphlet in answer, declaring these charges to be false and calumnious, and also asserting that, in a suit he had instituted he had sworn (in support of these charges) in opposition to his own handwriting; and evidence being given that there was ground for these statements, and the pamphlet of the company having been only handed by the manager to a party applying for a policy, in an answer to an inquiry by him as to the case:—*Held*, that if the publication was fair, *bonâ fide*, and without malice, and not for the purpose of injuring the policy-holder, but of vindicating the company, then it was privileged; and that if his charge were false, the publication, even if not privileged, was justified, because, if false, they were calumnious. *Kœnig v. Richie*, 3 F. & F. 413. *Whiteley v. Adams*, 12 W. R. 153; 9 L. T. N. S. 483, C. P. A plaintiff being a trustee of a charity, from which it was proposed to remove him, requested C., in whose employ he was, to canvas a protest against his removal. C. applied to the defendant for his signature, which the defendant refused, and on being asked for his reasons, said he would never sign to keep a big rogue like the plaintiff in the trust, "as he has robbed me of two pounds;" further stating, by way of explanation, that he (the plaintiff) had left the parish under discreditable circumstances, and without settling with his creditors; and added that he was surprised he kept such a man on with his son. In consequence of the words spoken, C. dismissed the plaintiff from his employ. The judge reserved for the court the question, whether the words were privileged or not, and asked the jury whether the special damage was the consequence of what the defendant said, and whether there was malice. The jury answered the first question in the affirmative, and gave damages, but negatived the second:—*Held*, that the occasion was privileged, and that mere intemperance of language, though forming evidence of malice, will not operate, if malice be negatived, to take away the privilege. *Cowles v. Potts*, 11 Jur. N. S.

II. Of the Remedies for Libel.

By Action.

(*a*) *Of the Declaration.*[1]

(*b*) „ *Pleas.*[2]

(*c*) *That an Apology was Printed, and Tender of Amends.*[3]

(*d*) *Of the Evidence.*[4]

946; 34 L. J. Q. B. 247; 13 W. R. 858. A timekeeper, employed on behalf of a public department, having written to the secretary of the department a letter reflecting on the conduct of the contractor:—*Held*, that if the letter was written in good faith, and for the information of his employers, it was privileged, although to the wrong person. *Scarl v. Dixon*, 4 F. & F. 250. Defamatory words carry with them *primâ facie* evidence of malice, which may be rebutted by evidence of the occasion upon which they were spoken; if that occasion is such as to render them privileged, and if nothing further appears from the evidence given in support of the plaintiff's case, the judge ought to direct a nonsuit; but if any additional evidence is given from which the jury may infer that the defendant did not honestly believe the imputations to be true, or that he was actuated by some sinister motive, and not by an honest desire to discharge his duty, the judge is bound to leave the case to the jury, who are to say whether the defendant spoke the words under the influence of a sinister motive or not. *Jackson v. Hopperton*, 16 C. B. N. S. 829; 12 W. R. 913; 10 L. T. N. S. 529.

[1] This report appeared in a newspaper: "*C. v. G.*" When this case was called on, the plaintiff was not in court, on which A., who appeared for the defendant (the plaintiff's mother-in-law), applied for costs, which were allowed, and the case struck out. An action for libel was brought for it, and the declaration alleged that it did not appear in the county court that the defendant was the plaintiff's mother-in law, but the fact was maliciously introduced into the report for the purpose of creating an unfavourable impression against the plaintiff, and a suspicion of him, and that he ought to be regarded with suspicion of being guilty of something wrong and blameable in suing his mother-in-law:—*Held*, that the declaration did not disclose any cause of action. *Cox v. Cooper*, 12 W. R. 75; 9 L. T. N. S. 329, Q. B. In a declaration for libel, the following were the words complained of, "She has done everything she can systematically to annoy me. Some years ago she dragged me into chancery; they had no business to include me, as I made no claim to the property; but of course it is a pleasure to her and her mother to put me to all the expense they can:" —*Held*, on demurrer, that the court could not say that these words were not matter of libel, and that the case ought to go to the jury. *Fray v. Fray*, 10 Jur. N. S. 1153, C. P.

[2] A newspaper proprietor published in the same paper two libellous letters on the conduct of a clergyman. In an action for libel the defendant pleaded in reference to the first letter justification, which was held a good plea; and as to the other letter that it was only a fair comment on the previous letter, and without malicious intent:—*Held*, on demurrer, this latter plea was bad, as the second letter contained a distinct substantive libel, which was left unjustified. *Walker v. Broyden*, 19 C. B. N. S. 65. A defence that the libel was a fair comment in a newspaper upon the plaintiff's acts, must allege that the article was a fair comment upon the plaintiff's conduct on the occasion therein referred to. *Clinton v. Henderson*, 13 Ir. Com. Law Rep. App. xliii. Ex. In an action by a discharged servant against his master for slander, imputing robbery; he pleaded that the servant had robbed him in giving away pieces of bread:—*Held*, that if they were such as the servant might fairly suppose the master would not object to his disposing of, the jury should find for the servant. *Roberts v. Richards*, 3 F. & F. 507. Sec. 61 of 15 & 16 Vic. c. 76, has not altered the law of pleading so as to allow a defendant in an action for libel or slander to plead pleas putting a different meaning upon the libel or slander from that assigned to it in the declaration, and justifying the libel or slander in the sense so put upon it by these pleas. *Bremridge v. Latimer*, 12 W. R. 878; 10 L. T. N. S. 816, C. P.

[3] In an action of libel, plea, that it was agreed to accept, in satisfaction, mutual apologies, to be published in certain newspapers, which were published accordingly, is a good plea of accord and satisfaction. *Boosey v. Wood*, 3 H. & C. 484; 11 Jur. N. S. 181; 34 L. J. Ex. 65; 11 L. T. N. S. 639. To an action for libel in a newspaper, defendant pleaded an apology and payment into court of 5*l*. The jury found the plea not proved, the apology not being sufficient, and the judge directed the jury to assess the damages irrespective of the amount paid into court, and not to consider that payment as an admission of liability to that amount, and jury having assessed the damages at 20*s*.:—*Held*, the direction of the judge was right. *Jones v. Mackie*, 3 L. R. Ex. 1; 37 L. J. 1; 16 W. R. 109; 17 L. T. 151.

[4] Interrogatories will not be allowed in an action of libel if they tend to charge the

(*e*) *Question for the Jury.*[1]

(*f*) *Of the Damages.*[2]

LIBRARIES, Public. 16 & 17 Vic. c. 151.[3]

LICENSE.[4]

defendant with an indictable offence. *Baker v. Lane*, 3 H. & C. 544; 34 L. J. Ex. 57. But in an action for slander, it being shown that the defendant, at a certain place, in the presence of certain persons, had made imputations against the plaintiff to the effect that he had committed forgery, but that the persons present refused to give him any further particulars, the court allowed interrogatories to be put to the defendant as to the precise words which he had used. *Atkinson v. Fosbroke*, 1 L. R. Q. B. 628; 12 Jur. N. S. 810; 35 L. J. Q. B. 182; 14 L. T. N. S. 553.

[1] Action for publishing the following libel: "The North-Eastern Railway Company. Caution. J. A. (the plaintiff) was charged before the magistrate at D. for riding in a train from L. for which his ticket was not available, and refusing to pay the proper fare. He was convicted in the penalty of 9*l.* 1*s.* 10*d.*, including costs, or three weeks' imprisonment." Plea, alleging a summary conviction adjudging the plaintiff to forfeit 1*l.*, and 8*l.* 1*s.* 10*d.* costs, and on nonpayment and in default of distress, the plaintiff to be imprisoned for three weeks, which conviction at the time of the doing of what was complained of was in full force. The replication set out the conviction, by which the period of alternative imprisonment was fourteen days. Rejoinder, that the conviction was described with substantial accuracy and truth, as well in the libel as in the plea:—*Held*, that the difference between the conviction and the statement of it published did not make the letter in law libellous. *Alexander v. North-Eastern Railway Company*, 6 B. & S. 240. But that it was a question for a jury whether the statement of the conviction was substantially true. *Id.* And that the plea was good, with an allegation that the conviction was in force at the time of pleading. *Id.*

[2] Although there is no inexorable rule of practice that the court will not grant a new trial on the ground of the smallness of the damages given, unless there has been some mistake in point of law on the part of the presiding judge, or in the calculation of figures by the jury, yet it will seldom be departed from, except where the jury have failed to really consider the quantity of damages. *Kelly v. Sherlock*, 1 L. R. Q. B. 686; 35 L. J. 209. When an apology, under 6 & 7 Vic. c. 96, s. 2, is pleaded, and money paid into court, if the jury find the plea not proved, they are not in assessing damages to take into consideration the sum brought into court. *Jones v. Mackie*, 37 L. J. Ex. 1.

[3] See Public Libraries' Act, 18 & 19 Vic. c. 95, sec. 4; explained 29 & 30 Vic. c. 114.

[4] The proprietors of a canal by deed granted to the plaintiff the sole and exclusive right of putting or using pleasure-boats for hire on the canal:—*Held*, that this did not confer such an interest in the plaintiff as to give him a right of action against another person for using pleasure-boats for hire on the canal. *Hill v. Tupper*, 32 L. J. Ex. 217; 11 W. R. 784. To an action for entering a close and breaking open a gate and lock with which it was fastened, the defendant pleaded (as a defence on equitable grounds), that a dispute had arisen between the plaintiff and defendant, and certain other persons, as to whether there was a highway over the plaintiff's land; and thereupon, in order that the defendant and the plaintiff's solicitor might arrange to come to a definite understanding as to the course to be pursued in deciding or trying the question, and in consideration that the defendant and other persons, at the request of the plaintiff, signed the same, it was, by a memorandum in writing, signed by the plaintiff, his solicitor, the defendant, and the other persons, agreed that, without prejudice on either side to the question of right to the way, it should remain open and unobstructed, for the passage of the defendant and the other persons, until the plaintiff's solicitor and the defendant should come to a definite understanding as to the course to be pursued in deciding or trying the question in dispute. The pleas stated that the trespasses were committed before any understanding had been come to, as to the use of the way by the defendant; and, because the gate was wrongfully and contrary to the agreement placed across the way and locked, the defendant broke it open:—*Held*, that the plea was bad both as an equitable and legal defence. *Hyde v. Graham*, 1 H. & C. 593; 7 L. T. N. S. 563. To an action for entering into a close, and carrying away trees, a plea on equitable grounds, that the defendant entered to complete the execution of an agreement, for buying and carrying away trees, with the last owner of the land, through whom the plaintiff held as devisee, which agreement had been partly executed in the lifetime of the testator, is bad. *Wakley v. Froggatt*, 9 Jur. N. S. 1248; 9 L. T. N. S. 340, Ex. A plaintiff declared upon an agreement, whereby H. agreed that L. might dig and carry away cinders from a cinder tip, paying for every ton of cinders so dug and carried away. The breach assigned was, that the cinder tip was not, at the time of the agreement, the property of H., whereby L. was prevented from obtaining the benefit of his

LIEN. 5 Abr. 382. *See* Attorney; Bankers; Carriers; Innkeepers; Principal and Agent; Vendor and Purchaser.

I. In General.[1]

II. In Particular Instances, and when waived.[2]

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contract:—*Held*, that it was not necessary, in order to support the action, that the agreement should be under seal. *Smart v. Jones*, 12 W. R. 430, C.P. Before bathing-machines came into use, certain parts of the shore of Hastings had been used from time immemorial for the purpose of bathing. Subsequently an act was passed prohibiting persons from bathing from the shore, except from bathing-machines, the owners of which were obliged to obtain a license from the local board for permission to ply for hire:—*Held*, that this license did not confer a right on the proprietors of bathing-machines to place them on the shore without the permission of the owner of the shore. *Mace v. Philcox*, 15 C. B. N. S. 600; 10 Jur. N. S. 680; 33 L. J. C. P. 324; 12 W. R. 670: 9 L. T. N. S. 766. A mere license, given by an owner to enter and use premises, for which the licensee has full opportunity of inspecting, which contain no concealed cause of mischief, and in which any existing source of danger is apparent, throws no obligation upon the owner to guard the licensee against danger. *Sullivan v. Waters*, 14 Ir. Com. Law Rep. 460, Ex. A license by deed to enter a dwelling-house at any time or times, and seize certain chattels and sell the same, will not justify a breaking and entering unless a demand of the goods has been first made, together with an intimation of the authority under which such demand is made. *Aikins v. Brunton*, 14 W. R. 636, Ir. Q. B.

[1] An artificer who, in the exercise of his right of lien, detains a chattel upon which he has expended his labour and materials, has no claim against the owner for taking care of the chattel while so detained. *Somes v. the British Empire Shipping Company* (House of Lords), 30 Law J. Rep. N. S. Q. B. 229; 8 H. L. Cas. 338. D. advanced to S., who was about to speculate in sugars, 10,999*l.* on a verbal agreement that D. should have a lien on the sugars imported by S. from Mauritius and Batavia. S. assigned his property to trustees for creditors before any sugars were bought in Batavia. D. having filed a bill, praying a declaration that he had a lien on sugars sent to S. from Batavia, but omitting any mention of Mauritius sugars:—*Held*, that D. was precluded from afterwards insisting on any claim in respect of Mauritius sugars. *Dean v. Byrnes*, 11 L. T. N. S. 97, P. C. A contract to carry a given number of articles for a lump sum, and any further number of similar articles, if any, at so much a head, is divisible; and a lien for the excess over the lump sum does not attach to the whole. *Prenty v. Midland Great Western Railway Company*, 14 W. R. 314, Ir. Ex. Defendants contracted with plaintiff that they would carry forty-four pigs for him. Plaintiff engaged a waggon and a half for the pigs, putting twenty-six in the waggon and eighteen in the half-waggon. There was a bye-law of defendants that no more than fifteen pigs should be at any time put in a half-waggon, or if more were put, that the excess should be charged for at the rate of 2*s.* 3*d.* per head. On the arrival of the train at its destination, defendants demanded 6*s.* 9*d.* for the three pigs in excess; plaintiff refused to pay it; whereupon defendants kept the whole of the pigs, conceiving they had a lien on all for the 6*s.* 9*d.* Plaintiff then brought an action against the company for not delivering the pigs in time, and for trover, and the jury found for him with 11*l.* damages:—*Held*, on motion for a new trial, that defendants had no lien on the forty-four pigs for the 6*s.* 9*d.*, the court giving no opinion as to whether they might have had a right of lien as against three of the pigs. *Prenty v. Midland Railway Company*, 15 L. T. N. S. 24, Ex.

[2] A vendor of property sold to a company, of which he was managing director, held to have waived his right of lien for unpaid purchase money, by inducing a person to lend money to the company on debentures, saying that the debentures should be a first charge on the property of the company. *In re Marine Mansions Company*, 4 L. R. Eq. 601. T. & Co., owners of flats or barges at Liverpool, were employed by H. & Co. to carry certain copper-ore to L., an owner of crushing-mills at Birkenhead, who, in consideration of being employed to crush the ore, agreed to indemnify H. & Co. against all risk in the transit. Whilst on its way to Birkenhead, the barge with the ore on board foundered in the river. T. & Co. thereupon gave notice of the loss to H. & Co., and requested to be employed to raise the cargo, to which a clerk in the employ of H. & Co. replied, "We have nothing to do with it; you had better see Mr. L. He has the management of it." T. & Co. then went to L., who said, "Oh, I am all right. I am insured with M.," and, in answer to a suggestion of T. & Co. as to the necessity for prompt action, he added, "You had better prepare for getting it up; but you must go to M. for orders." T. & Co. then went to M., who said, "You had better go on with it, and do the best you can for us." T. & Co. thereupon proceeded with the work, and, after incurring great labour and expense, succeeded in recovering the ore. H. & Co. afterwards tendered the sum agreed to be paid for the carriage of the ore to Birkenhead, and demanded it; but T. & Co. refused to part with it, claiming a lien upon

LIFE Insurance. *See* Insurance, Life, *ante*, p. 251.

Tenant for.[1]

LIGHTING RATE.[2]

LIGHTS. *See* also Easements; Nuisance.

I. Of the Acquisition, Nature, and Extent of the Easement, p. 298.

II. Extinguishment of Right, p. 299.

III. Obstructing Light, and Remedies, p. 299.

I. Of the Acquisition, Nature, and Extent of the Easement.[3]

it for the expense incurred in raising it from the bottom of the river:—*Held*, that there was no contract for the work done, as between T. & Co. and H. & Co., in respect of which such claim of lien could be sustained. *Castellain v. Thompson—Thompson v. Castellain*, 13 C. B. N. S. 105; 32 L. J. C. P. 79. *Held*, also, that T. & Co. could not, under the circumstances, set up a claim for either general average or for salvage. *Id.* A commercial dock company having received certain timber, entered or transferred into the names of C., M. & Co., timber-brokers, who were merely agents, and not the true owners, refused to deliver the timber to the owners until the dock charges for wharfage, rent, &c., due on other goods entered or transferred into the name of C., M. & Co. had been paid:—*Held*, that the right of the dock company to a lien for charges did not depend on the common law, but was governed by 10 & 11 Vic. c. 27, and that the company had no right to detain goods belonging to one person for charges due in respect of goods belonging to another owner, though all the parcels of goods were entered in the dock books in the name of the same person, such person, in reality, being merely an agent for the respective owners. *Dresser v. Bosanquet*, 9 Jur. N. S. 458; 32 L. J. Q. B. 374; 11 W. R. 840, Ex. Ch.

[1] On the death of a tenant for life, who had granted a lease under a power in a will, the reversioners were held entitled to recover the title deeds from an assignee of the lease, with whom they had been deposited as security for money advanced to the tenant for life and the lessee. *Easton v. London*, 33 L. J. Ex. 34; 9 L. T. N. S. 843, n.

[2] Order for a rate under the 3 & 4 Wm. 4, c. 90, s. 32, can only be a question by appeal under sec. 66 *Reg. v. Rye* (*Justices*), 10 L. J. 525. The 3 & 4 Wm. 4, c. 90, so far as related to lighting, was adopted by part of a parish only, and a rate was made under the act which in its heading purported to be a rate on the whole parish; but the names only of the persons liable to be rated were inserted in the rate:—*Held*, that the rate purported to be a rate for the whole of the parish, and as there was no power to make such a rate, it was a nullity; and that a fresh rate could be made for the same purpose the first was intended for, without quashing the first. *Potton* (*Churchwardens, &c.*) *v. Brown*, 10 L. T. N. S. 525, Q. B. *East London Waterworks Company v. Mile-end Old Town* (*Overseers*), 2 El. & El. 447. *See Lighting and Watching*, 3 & 4 Wm. 4. c. 90.

[3] The principles applicable to the acquisition are:—First, the right to ancient lights rests now on the Prescription Act, and not on presumed consent, *Tapling v. Jones*, 11 H. L. 290; *Dent v. The Auction Mart Company*, 21 L. J. 554. Secondly, s. 3 is retrospective, *Simper v. Foley*, 35 L. J. Ch. 151. Thirdly, to obtain an injunction, the prevention of light must be sufficient to render the house uncomfortable, and to prevent business being carried on as beneficially as formerly, *Back v. Stacey*, 2 C. & P. 465; and the obstruction must be such as to cause "material injury to the comfort of those who dwell" in the premises obstructed. *The Attorney-General v. Nicholls*, 16 V. C. S. 342. Fourthly, the damage must be actual. *Jackson v. Newcastle*, 33 L. J. Ch. 698. Fifthly, regard is not to be had to the possible future destination of the premises. And sixtly and lastly, an injunction will not be granted in all cases where damages lie at law. *Attorney-General v. Nicholl, dissentiente* Cranworth, C., in *Yates v. Jacks*, 35 L. J. C. 539; 1 L. J. N. 517. The right to the passage of air is not a right to an easement within the meaning of the 2 & 3 Wm. 4, c. 71, s. 2. *Webb v. Bird*, 13 C. B. N. S. 841, Ex. C.; 30 L. J. C. P. 384; 31 *id.* 335. The presumption of a grant from long-continued enjoyment only arises where the person against whom the right is claimed might have interrupted or prevented the exercise of the subject of the supposed grant:—*Held*, therefore, that a grant of a right to the free and uninterrupted passage of the currents of wind and air to a mill over the soil of another, cannot be presumed from an uninterrupted use of the mill for twenty years. *Id.* An owner of ancient lights is entitled not only to sufficient light for the purpose of his then business, but to all the light which he has enjoyed previously to the interruption sought to be restrained. *Yates v. Jack*, 1 L. R. Ch. App. 295; 12 Jur. N. S. 305; 14 W. R. 618; 14 L. T. N. S. 151. The right to light for a special purpose can only be based upon twenty years' enjoyment, with the knowledge of the person against whom it is claimed. *Loufronche v.*

II. Extinguishment of Right.[1]

III. Obstructing Light, and Remedies.[2]

LIMITED LIABILITY. *See* Joint Stock Company, 18 & 19 Vic. c. 133.

LIMITATIONS, Statute of. 5 Abr. 392. *See* also Ejectment.

(A) *In case of Debt on Simple Contract*, p. 300.

(B) *Actions upon a Specialty for Rent, &c.*, p. 300.

(C) *Penal Statute*, p. 300.

(D) *For Acts done under the Authority of a Statute*, p. 300.

(E) *From what Period the Limitation runs*, p. 300.

(F) *Of the Revival of the Remedy by a New Promise within Six Years*, p. 301.

(*a*) *By a Promise or Acknowledgment in Writing in cases of Simple Contract Debts*, p. 301.

(*b*) *Acknowledgment of Debts on Specialties*, p. 301.

(*c*) *By Part Payment of Debt, or Payment of Interest in case of Simple Contract Debts*, p. 302.

(G) *The Form of Plea and effect of foreign Statute*, p. 302.

Mackenzie, 36 L. J. Ch. 518. There is no essential difference in the amount of light and air that may be claimed in town or country, and the court will interefere, though the amount of sky area abstracted is small, if its proportion to the previous amount of sky is such that the abstraction causes inconvenience. *Martin v. Headon*, 2 L. R. Eq. 425; 12 Jur. N. S. 387; 35 L. J. Ch. 602; 14 W. R. 723; 14 L. T. N. S. 585. *Martin v. Headon*, 2 L. R. Eq. 425; 35 L. J. 602. In a large city the mere obstruction of the direct rays of the sun for two hours in the day, during the winter months, is not a sufficient ground for granting an injunction. *Clarke v. Clark*, 1 L. R. Ch. App. 16; 35 L. J. Ch. 151, C. A diminution of light to premises caused by the works of a railway company, which rendered the premises less suitable for the particular trade of the owner, is, within the meaning of this section, an "injuriously affecting" the premises, and the owner is entitled to compensation, although the selling value of the premises may not be diminished by reason of the railway. *Eagle v. The Charing Cross Railway Company*, 2 L. R. C. P. 638; 36 L. J. 297; 16 L. T. 593; 15 W. R. 1016.

[1] The operation of 2 & 3 Wm. 4, c. 71, ss. 3, 4, is to make it necessary that there should be an uninterrupted user of the access of light for a period of twenty years next before any suit or action, wherein the claim to the right to light was brought in question; there is no limit to the twenty years next before the pending suit or action. *Cooper v. Hubbuck*, 12 C. B. N. S. 456; 9 Jur. N. S. 575. Extinguishment by alterations of premises. *Binckes v. Pash*, 31 L. J. C. P. 121; 11 C. B. 324.

[2] It is not in every case in which an action can be maintained for the obstruction of ancient lights that an injunction will be granted by a court of equity, but the standard of the amount of damage that calls for the exercise of the jurisdiction has not been defined with any certainty. *Jackson v. Newcastle* (*Duke*), 10 Jur. N. S. 688, 810; 33 L. J. Ch. 698; 12 W. R. 1066; 10 L. T. N. S. 635, 802, C. In order to justify the interference of the court by injunction, the obstruction of the ancient lights of a manufactory or of business premises must be such as to render the buildings to a material extent less suitable for the business carried on in them. *Id.* Such obstruction must be one which diminishes the value of the premises for the purposes for which they are used at the time; and the fact that the obstruction may render the premises less fit for some other purposes to which they may by possibility be applied at a future time cannot be taken into consideration. *Id. See Luthin's Law of Window Light.* It is not every interference with the access of light which will entitle a plaintiff to the interposition of a court of equity; he must show material injury in order to obtain the assistance of the court. *Curriers' Company v. Corbett*, 11 Jur. N. S. 719; 13 W. R. 1056; 13 L. T. N. S. 154, L. J. The "right to obstruct light" possessed by an owner of a servient tenement is simply his right of building on his own land, and the opening of new windows by the owner of the dominant tenement neither confers nor enlarges such right. The "invasion of privacy by opening windows" is not a legal wrong or injury, the opening of new windows being in law an innocent act. Where, therefore, the owner of a dominant tenement, whilst preserving one ancient window, altered old windows, and opened new windows upon the same side of his house,

LIMITATIONS, STATUTE OF.[1]

(A) *In case of Debt on Simple Contract.*[2]

(B) *Actions upon a Specialty.*[3]

(C) *Penal Statute.*[4]

(D) *For Acts done under the Authority of a Statute.*[5]

(E) *From what Period the Limitation runs.*[6]

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so that the owner of the servient tenement was obliged, in obstructing the new and altered lights, also to obstruct the ancient lights:—*Held*, that such obstruction was illegal. *Tapling v. Jones.* 11 H. L. Cas. 290; 11 Jur. N. S. 309; 34 L. J. C. P. 342; 13 W. R. 617; 12 L. T. N. S. 555; 12 C. B. N. S. 826; 9 Jur. N. S. 462. If a landowner sells any portion of his land, the purchaser has a right to build upon it so as to obstruct the ancient lights on the remaining portion of the land. *Curriers' Company v. Corbett*, 11 Jur. N. S. 719; 13 W. R. 538; 13 L. T. N. S. 154, L. J. The court will not restrain the erection of buildings which merely prevent goods displayed in a shop from being seen from places whence they would previously have been seen. *Smith v. Owen*, 35 L. J. 317, Ch. The 2 & 3 Wm. 4, c. 71, s. 3, gives the dominant owner an absolute and indefeasible easement after a user of twenty years, which cannot be lost but by a clear act of abandonment. *Jones v. Tapling*, 11 Jur. N. S. 309.

[1] By 35 Geo. 3, c. 125, where an heir apparent to the throne has a separate establishment, any person having any debt or demand against him, must deliver the particulars of it within ten days after the expiration of the quarter in which the debt or demand was incurred, or in default shall be barred both at law and in equity; though the rule as to limitation by time does not apply in the case of express trusts, yet, as to them, in equity the general rule is that State demands are not to be encouraged. *M'Donnel v. White*, 11 H. L. Cas. 271.

[2] A note being given by A. and a surety, to a banker, and a contemporaneous memorandum of agreement, showing the note to be given as security for the banking account to be kept by A. with the bank:—*Held*, that the statute did not run from the time when A. became indebted to the bank, but from the time when the balance was struck. *Hartland v. Jukes*, 1 H. & C. 667; 9 Jur. N. S. 180; 32 L. J. Ex. 162; 7 L. T. N. S. 792. A note was given more than six years before action, with a memorandum indorsed on the back by the payees, to the effect that they undertook that no demand should be made for payment during the life of his maker. An action being brought within six years after the death of the maker against his executor, he pleaded the Statute of Limitations:—*Held*, that the payees were entitled to recover, if not upon the note itself, at all events, on a count setting forth the effect of the arrangement. *Watkins v. Figg*, 11 W. R. 258, Q. B. An executor has not a further period, beyond the six years, for bringing his action, where no action has been commenced by the testator within the six years. *Penny v. Brice*, C. P. 13 W. R. 342. When a party is called upon to pay the debt of another, his remedy over against such other runs from the time of actual payment by him, and not from the time when he became merely liable to pay. *Angrove v. Tippett*, 11 L. T. N. S. 708. Q. B.

[3] A general charge of debts upon real estate, with a direction to raise sufficient "by mortgage or otherwise" to pay them, does not create an express trust in favour of creditors, or prevent the Statute of Limitations, 3 & 4 Wm. 4, c. 27, from running against a specialty debt of the testator. *Dickinson v. Teasdale*, 32 Law J. Rep. N. S. Ch. 37; 1 De Gex, J. & S. 52. The Statute of Limitations does not apply to any case in which there is not strictly "a suit or action for the recovery of interest." *Edmunds v. Waugh*, 12 Jur. N. S. 326, Ch.; 1 L. R. Ex. 418; 35 L. J. C. 234.

[4] The period of limitation fixed by 31 Eliz. c. 5, within which an action must be brought for a penalty which may be sued for by the Crown or an informer, applies to cases where the penalty can be sued for by the informer only; and such actions must, therefore, be brought within one year after the commission of the offence. *Cullifford v. Blanford*, if an authority to the contrary, overruled. *Dyer v. Best*, 35 L. J. Ex. 105. Although this statute limiting the time within which actions for forfeiture of penalties under any penal statute must be brought, only in terms applies to actions by the Crown, or by an informer on behalf of the Crown (*qui tam*), and not to an action by an informer suing for himself, yet does it apply to the latter case, and such an action must be brought within a year after the offence is committed following. *Barrett v. Johnson*, 2 Jones, Ir. Ex.; *Dyer v. Best*, 1 L. R. Ex. 152.

[5] No action can be maintained against the guardians of a union or parish for any debt, claim, or demand due from them, unless such action is commenced within the half-year in which the same shall have been incurred or become due, or within three months after the expiration of such half-year, or unless the time has been extended by the Poor Law Board, under the 22 & 23 Vic. c. 49, s. 1. *Baker v. Billericay Union (Guardians)*, 2 H. & C. 642; 33 L. J. M. C. 40.

[6] Where money is lent by cheque the time is not computed from the day of giving

(F) *Of the Revival of the Remedy by a New Promise, &c., within Six Years.*

(*a*) *By a Promise or Acknowledgment in Writing in cases of Simple Contract Debts.*[1]

(*b*) *Acknowledgment of Debts on Specialties.*[2]

the cheque, but from the day it is paid. *Garden v. Bruce*, 37 L. J. C. P. 112. A. was owner of houses standing on land which was surrounded by the lands of B., C., and E. E. was owner of mines running underneath the lands of all these persons. He worked the mines in such a manner (without actual negligence) that the lands of B., C., and D. sank in; and after more than six years' interval the sinking occasioned an injury to the houses of A.:—*Held*, that a right of action accrued to A. when this injury actually occurred, and that his right was not barred by the Statute of Limitations. *Backhouse v. Bonomi*, 9 H. L. Cas. 503; 34 L. J. Q. B. 181.

[1] The insertion of a debt in the schedule to a deed of inspectorship executed for the purpose of distributing the estate of a debtor, is not, although the schedule be verified by the affidavit of the debtor, a sufficient acknowledgment to take the debt out of the operation of the Statute of Limitations, so as to entitle the creditor to prove for the debt under a subsequent distribution of the debtor's estate in bankruptcy. *Ex parte Topping, in re Levey & Robson*, 34 Law J. Rep. N. S. Bankr. 44. Nor is the payment by the inspectors of a dividend upon the debt a sufficient part-payment for that purpose. *Bush v. Martin*, 9 Jur. N. S. 851; 8 L. T. N. S. 509; 33 L. J. Ex. 17; 2 H. & C. 311. A defendant, in order to take a debt, pleaded as a set off, out of the operation of the Statute of Limitations, gave in evidence a letter written by the plaintiff to Q., a third person, stating an account showing the existence of the debt from the plaintiff to the defendant, but also that a balance was due from the defendant to the plaintiff; and proposing to settle the matter upon payment by the defendant to the plaintiff of a sum named. The defendant had not acceded to the proposal:—*Held*, that the letter was not a sufficient acknowledgement of the debt, within 9 Geo. 4, c. 14, s. 1, to defeat the operation of the statute. *Francis v. Hawkesley*, 1 El. & El. 1052. In 1853, H., as principal, and the defendant as surety, gave to the plaintiff their joint and several promissory notes for payment of 200*l.* on demand. In 1861, H. assigned all his property for the benefit of his creditors, and the defendant signed and gave to the plaintiff the following letter:—"I hereby consent to your receiving the dividend under H.'s assignment, and agree that your so doing shall not prejudice your claim upon me for the same debt." The plaintiff accordingly received the dividend, and in 1862 sued the defendant for the balance of the note:—*Held*, that the letter was not an acknowledgment of the debt, so as to take the case out of the statute. *Cockrill v. Sparke*, 1 H. & C. 699; 9 Jur. N. S. 307; 32 L. J. Ex. 118; 11 W. R. 428; 7 L. T. N. S. 752. That the letter, coupled with the payment, did not render it more than only payment by a co-debtor, so as to take the case out of sec. 14 of the 19 & 20 Vic. c. 97. *Id.* "It is quite true that I have not sent any money for years; but really I have none of my own. We just manage to exist on my wife's; at least, on what is left of hers. We have hard work to get on; but I will try to pay you a little at a time, if you will let me. I am sure that I am anxious to get out of your debt. I will endeavour to send you a little next week:"—*Held* (per *Bramwell, B.*, and *Channell, B.*, *Martin, B. dissentiente*), a sufficient acknowledgment to take the debt out of the Statue of Limitations. *Lee v. Wilmot*, 35 L. J. Ex. 175; 1 L. R. 364. An agreement to refer certain accounts between the parties hereto, after reciting that disputes had arisen between them in respect of them, empowered the arbitrators by their award to ascertain what was due and of right payable, and to order any sum which might be found due to be paid at such times and in such proportions as they should seem fit. The arbitration having proved abortive:—*Held*, that the agreement amounted to a conditional recognition of the debt only on the part of the debtor, and that the condition being unfulfilled, it did not amount to a sufficient acknowledgment of the debt to take it out of the operation of the statute. *Hales v. Stevenson*, 9 Jur. N. S. 300, Q. B.; 8 L. T. N. S. 798, Ex. Ch. After an administration decree, an executor has no right, as against the parties interested in the estate, to give an acknowledgment to take a debt barred by the Statute of Limitations out of its operation. *Phillips v. Beal*, 32 Beav. 26.

[2] An acknowledgment by a mortgagor of more than six years' arrears of interest being due upon a first mortgage does not preclude a puisne mortgagee from relying on the Statute of Limitations, 3 & 4 Wm. 4, c. 27. *Bolding v. Lane*, 1 De G. J. & Sm. 122; 9 Jur. N. S. 506. "In answer to your letter, I beg to say that I deny the claim of your client. I need only add, that if he were entitled to the account it would be of no use, as the rents and profits of the estate have never been sufficient to pay the interest of the first charge:"—*Held*, not to be an acknowledgment within sec. 28 of 3 & 4 Wm. 4, c. 27, of the second incumbrancer's right to redeem. *Thompson v. Bowyer*, 9 Jur. N. S. 863; 11 W. R. 975, R. Where a debtor, by specialty, dies leaving personal estates, real estate devised to trustees for payment of debts, and also real estate devised beneficially, each of the persons representing these

(c) *By Part Payment of Debt, or Payment of Interest.*[1]

(G) *Of the Form of Plea*[2] *and effect of foreign Statute.*[3]

LIQUIDATIONS.[4]

LIQUIDATED Damages.[5] 5 Abr. 407.

LIS PENDENS.[6]

LITERARY Institutions. *See* 17 & 18 Vic. c. 112.

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three estates is a "party liable by virtue of such specialty" within the meaning of; and a payment or acknowledgment by either of them, personal representative, trustees, or beneficial devisee, is a payment or acknowledgment by the party liable, and keeps the debt alive against all of them. *Coope v. Cresswell*, 2 L. R. Eq. 106; 35 L. J. 496. *In re Fitzmaurice*, 15 Ir. Eq. Rep. 445.

[1] Payment of a dividend on a debt under an inspectorship deed is not such a part payment as takes the debt out of the Statute of Limitations. Part payment to do so must be accompanied by an admission, expressed or implied, that the balance of the debt is due and payable on demand. *Ex parte Topping, In re Levey*, 34 L. J. N. S. Bcy. 44. *See Cockrill v. Sparkes*, 1 H. & C. 696. In 1833, trustees of a marriage settlement lent to the husband, at interest, some of the money settled to the separate use of his wife, on security of the joint bond of the husband and the defendant. No interest was paid; but on the 31st October, 1847, it was arranged between the trustees and the husband and wife that she should give the trustees her receipt for the interest up to that date, which she accordingly did. She afterwards from time to time gave receipts for each half-year's interest up to November, 1860. No money ever passed:—*Held*, that the transaction amounted to a payment or satisfaction of the interest, so as to take the case out of the 3 & 4 Wm. 4, c. 42, s. 5. *Amos v. Smith*, 1 H. & C. 238. A., who owed B. a sum of money on a promissory note, which was barred by the Statute of Limitations, told B. that he was prepared to pay the interest on the debt; an account of the interest was made out, and A. put his hand in his pocket as if to pay it, when B. said to A.'s wife, who was present, "I shall make you a present of this money," and B. then gave A. a receipt for the interest, and indorsed its payment on the promissory note; no money actually passed on the occasion:—*Held*, that the circumstances would be sufficient to prove a plea of payment, and that the case was taken out of the statute. *Maber v. Maber*, 2 L. R. Ex. 153; 36 L. J. 70. In 1853, H. as principal and the defendant as a surety gave a joint and several promissory note to the plaintiff, payable on demand. In 1861, H. made an assignment for the benefit of his creditors, and the defendant signed and gave the following letter to the plaintiff: "I consent to your receiving the dividend under H.'s assignment, and agree that your so doing shall not prejudice your claim upon me for the same debt." The plaintiff accordingly received a dividend on the note, and afterwards brought an action on it against the defendant for the balance, to which he pleaded the statute:—*Held*, that the payment of the dividend, coupled with the letter, did not amount to more than a payment only by one co-debtor under 19 & 20 Vic. c. 97, s. 14, and that, therefore, the defendant, the other co-debtor, was entitled to the benefit of the statute by virtue of that section. *Cockrill v. Sparke*, 1 H. & C. 699; 32 L. J. Ex. 118.

[2] A plea that a debt accrued more than six years ago, without stating that it did not accrue within the six years, does not amount to an informal plea of the statute. *Bush v. Martin*, 2 H. & C. 311; 10 Jur. N. S. 347; 33 L. J. Ex. 17.

[3] Where a foreign statute of limitations only takes away the remedy (as the English statute does), it is no bar if for a shorter period than six years. *Harris v. Quine*, 38 L. J. Q. B. 331.

[4] 31 & 32 Vic. c. 68, is an act to facilitate liquidation in certain cases of bankruptcy, arrangement, and winding up, and is to apply in bankruptcy, where the adjudication has been made before the passing of the Act, or a deed of arrangement has been registered before, and bankruptcy supervenes before the completion, or in case of arrangement, where the deed has been registered before the passing of the act, or in case of winding up, when proceedings are heard at the passing of the act. By ss. 7 & 8 liquidator's power to prepare scheme, relates to noting of scheme and confirmation of scheme by court; by s. 10, scheme when confirmed shall be binding on all affected by the scheme, and after six months foreclosed, general order to be made.

[5] A builder contracted to do certain repairs and alterations to a house, to be completed within a specified time, subject to a penalty of 20*l.* per week that any of the works remained unfinished after the stipulated periods:—*Held*, that the sum of 20*l* per week was in the nature of liquidated damages, and could not be deducted by the employer without proving the loss he had actually sustained by reason of the delay. *Crux v. Aldred*, 14 W. R. 656.

[6] Notice of a *lis pendens* is not necessarily notice of an incumbrance. *Bull v.*

LLOYD'S Bonds. *See* Chose in Action.

LOAN Society.[1] 5 Abr. 402. *See* 3 & 4 Vic. c. 110; 21 Vic. c. 19; 26 & 27 *id.* c. 56.

LOCAL and Personal Act. *See post*, Statutes.

LOCAL Government Acts. *See* Public Health.

LOCOMOTIVES on Turnpike Roads. *See* 28 & 29 Vic. c. 83.

LODGINGS. 5 Abr. 402. *See* Landlord and Tenant; Lodging Houses; 14 Vic. cc. 28, 39; 16 & 17 id. c. 41; 23 & 24 id. c. 26.

LORD-Mayor's Court. *See* Foreign Attachment.

LORD'S DAY. *See post*, Sunday.

LOTTERY.[2] *See* also Gaming, 4 Abr. p. 600.

LUGGAGE. *See* Carrier, 3 Abr. p. 31; *ante*, Innkeeper.

LUNACY. *See* 25 & 26 Vic. c. 86; *id.* c. 111. Commission of, 5 & 6 Vic. c. 84. Regulation, 16 & 17 Vic. c. 70; 18 & 19 Vic. cc. 13, 105. Care of, 8 & 9 Vic. c. 100; 16 & 17 Vic. c. 96; 18 & 19 Vic. c. 105; (*crim.*) 23 & 24 Vic. c. 75; 25 & 26 Vic. c. 104; 26 & 27 Vic. c. 110. Property of, 15 & 16 Vic. c. 48; 18 Vic. c. 13.

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Hutchons, 9 Jur. N. S. 954; 8 L. T. N. S. 716, R. *See* 18 Vic. c. 15.

[1] Action against a surety in a note payable on demand, given by a member of a loan society to the trustees. The principal debtor continued for some time regularly to pay his monthly subscriptions, premiums and interest, as a member of the society, but afterwards failed to do so:—*Held*, that the contract on the note was entirely distinct from the liability of the borrower as a member of the club, and that these payments were not to be applied in payment of the note. *Wright v. Hickling*, 2 L. R. C. P. 199; 36 L. J. 40. An order for payment by a justice of the peace, under 3 & 4 Vic. c. 110, must be for immediate payment; he has no jurisdiction to order payment in a certain time from making the order. *Parker v. Boughey*, 3 B & S. 43; 9 Jur. N. S. 118.

[2] By the 1st section of the 10 & 11 Wm. 3, c. 17, and 42 Geo. 3, c. 119, the keeping a lottery is declared a public nuisance. By other sections, a person who keeps a lottery is liable to a heavy penalty, or to be treated as a rogue and a vagabond:—*Held*, that such person is also liable to an indictment as for a misdemeanor. *R. v. Crawshaw*, 30 Law J. Rep. N. S. M. C. 58; Bell, C. C. 303. The programme of an entertainment stated that at its conclusion the proprietor "would distribute amongst his audience a shower of gold and silver treasures, besides a shower of smaller presents, all of which would be impartially divided amongst the audience and given away." The public were admitted on purchasing tickets, which were not numbered. The seats of the audience were numbered. At the conclusion of the entertainment the

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proprietor called out a number on a seat, and delivered one of the articles to the person occupying that seat, and in that way distributed all the articles amongst the audience:—*Held*, a lottery within the 42 Geo. 3, c. 119, s. 2. *Morris v. Blackman*, 2 H. & C. 912; 10 Jur. N. S. 520.

[1] Imbecility arising from natural causes, such as intemperance, or from the natural decay of the faculties through old age, would constitute the patient so affected a person of unsound mind within the 8 & 9 Vic. s. 100, c. 90. *R. v. Shaw*, 37 L. J. M. C. 112. A wife was entitled to separate estate derived from her first husband. Her second husband became lunatic, and she incurred a debt in order to pay for necessaries for him and herself during his lunacy. Upon his death the lender carried in a claim against his estate:—*Held*, that the wife was entitled to pledge her husband's credit for necessaries. *Davidson v. Wood*, 9 Jur. N. S. 589; 11 W. R. 791; 8 L. T. N. S. 476. But not where the husband makes her a sufficient allowance. *Richardson v. Du Bois*, 4 L. J. N. C. 230.

[2] Where, upon a trial for murder, the plea of insanity is set up, the question for the jury is, did the prisoner do the act under a delusion, believing it to be other than it was? If he knew what he was doing, and that it was likely to cause death, and was contrary to the law of God and man, and that the law directed that persons who did such acts should be punished, he is guilty of murder. *Reg. v. Townley*, 3 F. & F. 839. *Reg. v. Burton*, 3 F. & F. 772.

[3] An application of a lunatic for a supersedeas of the commission of lunacy, on the ground of his recovery, will not be at once granted, but will be ordered to stand over until it can be seen what will be the effect of removing the restraint imposed by the existence of the commission. *Blackmore, In re*, 1 De G. J. & Sm. 84; 9 Jur. N. S. 90; 32 L. J. Chanc. 436; 8 L. T. N. S. 264, 476.

[4] Land of which a lunatic is tenant for life cannot be sold for building purposes, under 16 & 17 Vic. c. 70, s. 125, which applies only to lands of which a lunatic is seised or entitled in fee. *Corbett, In re*, 1 L. R. Chanc. App. 516; 12 Jur. N. S. 679; 35 L. J. Chanc. 793; 14 W. R. 904; 14 L. T. N. S. 748, C. By sect. 12 of 25 & 26 Vic. c. 86, where the property of a lunatic does not exceed 1000*l.* in value, or 50*l.* per annum, and the lunatic does not oppose, the court may, without directing a commission to issue, apply such property, or the income, for his benefit:—*Held*, that property was to be construed as property clear of debt. *Adams, Ex parte*, 10 Jur. N. S. 137; 9 L. T. N. S. 626, C.

[5] Assuming that a person is of sound mind when conveyed, under proper authority, to a lunatic asylum, it would not be illegal on the part of the keepers of the asylum to detain him until they had proper authority for his discharge. *Mackintosh v. Smith*, 4 Macq. H. L. Cas. 913. A medical man, who has merely signed a certificate, and has done nothing more towards causing the confinement of a lunatic, is not liable in trespass. Nor, if he has merely consulted another medical man, and told him his own idea of the case, is he liable for causing the other to sign such certificate. But if he signs such a certificate without taking due care and making due inquiries, he is liable for the consequences which ensue. *Hall v. Semple*, 3 F. & F. 337, C. In an action against two medical men for having, with other persons, unlawfully entered the house of the plaintiff, and assaulted and imprisoned her therein, it would be a good defence to plead that they, at the desire of her friends, sent not only a female nurse, but also a male attendant, who were both engaged by the plaintiff's friends, but to whom the defendants gave directions, and that there was no more restraint than necessary as a part of medical treatment. *Symm v. Fraser*, 3 F. & F. 859. A county lunatic asylum does not lose the exemption from increase of parochial and other rates on land acquired for its purposes, by taking in foreign paupers and private patients under the powers given by section 43; and a garden of twenty acres and a farm of thirty acres, for the healthful employment of the patients, although rendered profitable, are within the exemption. *Reg. v. Overseers of Fulbourn*, Q. B. 34 L. J. N. S. Mag. Cas. 106. The chaplain of a lunatic asylum, for whose accommodation the committee of visitors built a house upon a portion of the land purchased for the purposes of the asylum, in which they required him to re-

VI. Of Lunatic Paupers.[1] *See* also Settlement.
VII. The Treatment of Lunatics.[2]
VIII. Service of Processes on.[3]

M.

MACHINERY, Malicious Injury to. 24 & 25 Vic. c. 97, ss. 14, 15; *post*, Malicious Injuries, p. 306.

side, is not exempted from ratability in respect thereof. *Congreve v. Upton* (*Overseers*), 10 Jur. N. S. 538; 4 B. & S. 857.

[1] Under 18 & 19 Vic. c. 105, s. 14, if lunatics, whose settlement cannot be ascertained, are sent to an asylum from a borough having a separate court of quarter sessions, the borough is liable to the expenses if it does not contribute to the county rate under 5 & 6 Will. 4, c. 76, s. 117, and is not liable if it does so contribute. *Reg. v. Bacchus*, 2 El. & El. 181, Ex. Ch. The expense of the maintenance of a wife in a lunatic asylum, she having been, on the application of her husband, received into the workhouse as chargeable to the parish, and removed to the asylum under an order obtained in pursuance of 16 & 17 Vic. c. 97, is relief given to the husband, so as to prevent his acquiring, under the 9 & 10 Vic. c. 66, a status of irremovability by residence in the parish during that time. *Reg. v. St. George, Bloomsbury* (*Overseers*), 4 B. & S. 108. *East Redford Union* (*Guardians*) *v. Strand Union* (*Guardians*), 3 B. & S. 122. The expense of the maintenance of a pauper lunatic above the age of sixteen in a lunatic asylum, under 16 & 17 Vic. c. 97, is not relief given to its parent, so as to prevent the parent acquiring, under 9 & 10 Vic. c. 66, a status of irremovability by residence in a parish during that time. *Reg. v. St. Mary, Islington*, 3 B. & S. 46. *Reg. v. Newchurch*, 3 B. & S. 107; 9 Jur. N. S. 536; L. J. M. C. 19; 11 W. R. 24; 7 L. T. N. S. 271. A justice of a borough not having a quarter sessions, has no jurisdiction under sect. 67 of 16 & 17 Vic. c. 97, to send a pauper lunatic to an asylum. *Faversham v. Isle of Thanet Union*, 2 B. & S. 275. An order of justices upon a union for the maintenance of a lunatic pauper in the lunatic asylum, not determining his settlement, is not the subject of appeal to the quarter sessions; it is a mere interim order, which, if objected to, can be questioned in other modes pointed out by this act. *Kettering Union v. Northampton Lunatic Asylum*, Q. B. 34 L. J. N. S. Mag. Cas. 198. Where a removable pauper lunatic is adjudged to have his settlement in a parish of a union formed under this act—Gilbert's Act—the order of maintenance should be on the guardians of the parish of settlement, not on the guardians of the union. *Leatham v. Bolton Le Sands*, Ex. Ch. 35 L. J. Mag. Cas. 62. A pauper who had resided, sometimes with her mother and sometimes with her brother, in the parish of G., went to live out of the parish as a domestic servant for one month, on the terms that the service was to be continued at the end of that time if both mistress and servant agreed. She took her clothes with her, and left no property in G. She always intended to return to her mother's house in the event, which happened, of her mistress dismissing her at the end of the month, and did then return and reside in G. till she was removed to a lunatic asylum:—*Held*, that under 9 & 10 Vic. c. 66, s. 1, and 24 & 25 Vic. c. 55, s. 1, the residence in G. was broken by the month's absence, since, while the pauper was so absent she had no residence in G. to which she could return. *Reg. v. the Guardians of the Poor of the Glossop Union*, 35 L. J. M. C. 148. An order of justices adjudicating a lunatic as chargeable to the county, the lunatic's settlement not being then ascertained, is a mere interim order, and one from which no appeal lies; and the justices have jurisdiction upon the settlement of the lunatic being subsequently ascertained, to order the parish of settlement, although it may have been the parish that obtained the first order, to maintain the lunatic. *All Saints, Poplar, v. Middlesex*, Q. B. Ell. & Ell. 829. *The Queen v. the Justices of Kent*, 35 L. J. N. S. 201; 1 L. R. Q. B. 385.

[2] A man who has voluntarily taken upon himself the care of a lunatic brother in his own private house is a person "having the care and charge" of a lunatic within the 16 & 17 Vic. c. 96, s. 9, and is liable to be indicted for ill-treating him. *Reg. v. Porter*, 1 L. & C. C. C. 394; 9 Cox, C. C. 449; 10 Jur. N. S. 547; 33 L. J. M. C. 126; 12 W. R. 718; 10 L. T. N. S. 306.

[3] The court has power to allow a plaintiff to proceed in an action as if personal service of the writ of summons had been effected, although the defendant is a lunatic, and will so order, if satisfied that reasonable efforts have been made to effect personal service, and that the writ has come to his knowledge. *Kimberley v. Alleyne*, 2 H. & C. 223.

MAGISTRATES, Stipendiary, appointment of, in Boroughs of more than 25,000. 24 & 25 Vic. c. 9.

MAINTENANCE. *See* Alimony, p. 15; Champerty, p. 98.

MALICIOUS INJURIES.[1] 5 Abr. 413. 24 & 25 Vic. c. 97.

MALICIOUS PROSECUTION,[2] **PROCEDURE,** and **ARREST.**[3]

MANDAMUS.

I. Under the Common-Law Procedure Act, 1854.[4]

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[1] The 24 & 25 Vic. c. 97, s. 9, was intended to apply to malicious injuries to houses by throwing explosive substances against or into them, with intent to destroy them or injure the inmates, and not to cases of wanton mischief or assault. *Reg. v. Brown*, 3 F. & F. 821. So where the prisoner plugged up the feed-pipe of a steam-engine, and displaced other parts of the engine in such a way as rendered it temporarily useless, and would have caused an explosion if the obstruction had not been discovered:—*Held*, that he was guilty of damaging the engine, with intent to render it useless. *Reg. v. Fisher*, 10 Cox, C. C. 146; 1 L. R. C. R. 7. 35 L. J. M. C. 57. Upon an indictment under this section for maliciously wounding a horse, it is not necessary to prove that the wound was inflicted with any instrument. *Reg. v. Bullock*, L. R. C. C. R. 115; 37 L. J. (M. C.) 47; 17 L. T. 516. But throwing a lighted paper into a letter-box in a house with the intent to burn the letters only, is not a felony within these sections. *Reg. v. Batstone*, 10 Cox, Crim. Law Cas. 20. Upon an indictment for cutting eight trees with intent to steal, whereby an amount of injury was done to them exceeding 5*l.*, framed upon the latter part of section 32 of 24 & 25 Vic. c. 96, proof that the aggregate value of a number of trees cut *at one time* exceeded the amount of 5*l.* will satisfy the indictment, though no one tree was of the value of 5*l.* *R. v. Shepherd*, 37 L. J. M. C. 45. But not committed at several times, *Reg. v. Williams*, 9 Cox, C. C. 338.

[2] An action for a malicious prosecution will not lie if the proceeding complained of terminated in the conviction of the plaintiff, which has not been quashed; and it makes no difference that there is no appeal from such conviction. *Basebé v. Matthews*, 36 L. J. M. C. 93. Such a termination applies equally upon principle where the proceedings are *in rem* before a foreign court of competent jurisdiction. *Castrique v. Behrens*, 3 Ell. & Ell. 709. Nor will the defendant, in an action for maliciously and without reasonable or probable cause procuring the plaintiff to be apprehended on a charge of felony, rely on circumstances of mere suspicion as evidence of reasonable or probable cause. *Busst v. Gibbons*, 30 L. J. R. (N. S.) Exch. 75. The existence of reasonable or probable cause is to be decided by the judge. *Id. See Fitzjohn v. Mackinder*, 30 L. J. C. P. 257; 9 C. B. 505. *Dawson v. Vansandau*, 11 W. R. 516—Q. B.

[3] In an action against a builder, his attorney, and the attorney's clerk, for maliciously and without reasonable or probable cause procuring an order for the arrest of the plaintiff:—*Held*, that there was no reasonable or probable cause for the proceeding, as there was no reason to suppose that the plaintiff was going abroad for any lengthened time, or to avoid the action. *Melia v. Neate*, 3 F. & F. 757. That if the proceeding was for any improper purpose, as to coerce the plaintiff into more speedy payment, it would be malicious; but its merely being an improper proceeding, and without reasonable cause, was not *per se* evidence of malice, assuming *bona fides*. *Id. See Brooks v. Blain*, 4 L. J. N. C. 231. A declaration that the defendant maliciously and without reasonable and probable cause procured an attachment to be issued out of the Lord Mayor's Court to attach a debt, is bad, for not showing that the proceedings in the suit in the Mayor's Court had been terminated. *Parton v. Hill*, 12 W. R. 753; 10 L. T. N. S. 414—Q. B. The maliciously suing out a commission of bankruptcy is not analogous to the proceeding by trader-debtor summons. *Lunham v. Wakefield*, 16 Ir. Com. Law R. 507. A. commenced an action against H. for 28*l.*, specially endorsed, and before appearance H. paid and A. accepted 10*l.* on account, and A. subsequently signed judgment in default of appearance for 28*l.*, issued a *ca. sa.*, and arrested H., who paid the amount and costs, and H. brought his action against A. for maliciously signing judgment and issuing execution:—*Held*, on plea and demurrer, *that while the judgment stood* an averment that it was wrong could not avail. The right course would have been to have applied by motion to reduce the judgment. *Huffer v. Allen*, 2 L. R. 2 Ex. 15; 36 L. J. Ex. 17.

[4] This gives a right to claim a mandamus, either alone or in conjunction with an action for damages, whenever a duty imposed by law has been neglected. *Fotherby v. Metropolitan Railway Company*, 12 Jur. N. S. 1005; 2 L. R. C. P. 188; 36 L. J. C. P. 801; 15

II. Of the Prerogative Writ of Mandamus.[1]

III. Practical Proceedings connected with, and Costs.[2]

MANOR.[3]

MANSLAUGHTER. *See post*, Murder and Manslaughter, p. 327.

MARK. *See post*, Trade-Mark.

MARKETS and FAIRS. 5 Abr. 441. *See* 10 Vic. c. 14.[4]

L. T. N. S. 243. A claim to such a writ cannot be sustained if there is any other equally effectual remedy. *Bush v. Beavan*, 1 H. & C. 500; 32 J. 54. *See Hastings v. Lower Bann Navigation Trustees*, 14 Ir. Com. Law Rep. 534—Q. B.

[1] Where a new right has been created by act of parliament, the proper method of enforcing it is by mandamus at common law. *Simpson v. Scottish Union Fire and Life Insurance Company*, 9 Jur. N. S. 711; 32 L J. Chanc. 329; 11 W. R. 459; 8 L. T. N. S. 112. As a mandamus to reinstate a person in an office only lies where the office and its tenure are of a permanent nature, it is not an available remedy for the secretary of a benefit society, who has been dismissed by a resolution of a meeting of the society. *Evans v. Heart of Oak Benefit Society*, 12 Jur. N. S. 163; 13 W. R. 724. A clerk to trustees of a parish, acting under a local act of parliament, having discharged certain onerous duties in connexion with legal proceedings in which the parish was engaged, the trustees passed a resolution giving a sum beyond his usual stipend, as a gratuity:—*Held*, that there was no power to give gratuities out of the rates, and the court therefore refused to grant a mandamus directing the treasurer of the parish to sign and pay a cheque for such gratuity. *Mellish, ex parte*, 8 L. T. N. S. 47—Q. B. A party applied to the Insolvent Debtors' Court for an order to vest such a surplus in him, under 1 & 2 Vic. c. 110, s. 92, claiming under an alleged assignment to him by the insolvent. That court, upon inquiry, held that the assignment was invalid as against other claimants of the surplus, and refused to make the order. The Court of Queen's Bench, holding that the functions of the Insolvent Debtors' Court were judicial and not merely ministerial, refused to issue a mandamus commanding that court to make the order. *Cook, ex parte, in re Dyson*, 2 El. & El. 586. A writ of mandamus which orders the vestry of a parish subject to the operation of the Metropolis Local Management Acts to make immediately such sewers and works as may be necessary for effectually draining a particular part of the parish, without showing that a reasonable time has elapsed, or that there is at present duty to drain that particular part at once, or that the approval of the Metropolitan Board of Works has been obtained, is defective and cannot be supported. *R. v. St. Luke's, Chelsea*, 31 L. J. R. N. S. Q. B. 50; 1 B. & S. 903. Nor to the Lords Commissioners of the Treasury to compel them to pay a debt incurred by a county court; and this even though Parliament has, upon an estimate made by the Commissioners of the Treasury, voted a sum for the salaries and expenses of the county courts for the year. *Ex parte Walmsley*, 1 B. & S. 81.

[2] The court will not, in the first instance, grant a rule for a mandamus calling on a public body to make a rate for payment of costs due to a successful appeal against a rate. The proper course is to bring the sessions order for payment of costs into the Q. B., where its validity may be determined. *Austin, ex parte*, 13 L. T. N. S. 443. After judgment for the Crown on a return to a writ of mandamus, the defendants having voluntarily, and with the prosecutor's consent, done the act enjoined, the court will quash a peremptory writ of mandamus as unnecessary. *Reg. v. Sadlers' Company*, 4 B. & S. 570; 33 L. J. Q. B. 68. The general practice upon making absolute a rule for a mandamus is not to give costs, but to require a separate motion to be made for them. *Reg. v. Brighton and South Coast Railway Company*, 10 L. T. N. S. 496—Q. B. A claim defectively stated in writ cured by verdict where the issue required proof of facts so defectively stated. *Delamere v. the Queen* (House of Lords), Q. B. 36 L. J. 313. As to time for applying for costs of mandamus to enter continuances and hear appeal, *see R. v. the Justices of Kent*, 36 L. J. N. S. 130.

[3] The grant of a court baron involves the grant of a manor, for it implies the existence of freeholders of the manor, holding under the lord, and owing suit and service to him. *Delacherois v. Delacherois*, 10 Jur. N. S. 886; 13 W. R. 24; 10 L. T. N. S. 884—H. L.

[4] A sale by sample, on a market day, near to but without the limits of the market, is not a disturbance of the market, unless done designedly and with the intention to evade payment of toll. *Brecon (Mayor, &c.) v. Edwards*, 1 H. & C. 51. 34 L. J. Q. B. 368. A "shop" in which a seller may sell

MARRIAGE, Divorce, and Matrimonial Causes.

See Rules and Orders, 35 L. J. P. & M.

I. Who may Intermarry, 5 Abr. 443.

Marriage acts, 4 G. 4, c. 76; 6 & 7 W. 4, c. 85; 3 & 4 V., c. 72; 19 & 20 V., c. 119.
——— of British subjects abroad, 12 & 13 V., c. 68; (*Ionian Is.*), 23 & 24 V. c. 86; 31 & 32 V. c. 41; (*Quakers*), 23 V., c. 18.
Marriages within prohib. deg., 5 & 6 W. 4. c. 54.
——— in dist. chur., 7 & 8 V. c. 56; (*Westmorl.*), 23 V., c. 1.
——— in residential districts, 3 & 4 V., c. 72; parochial pl., 23 V., c. 24; valid at, 24 V., c. 16.
———, registry of, 15 V., c. 25; 19 & 20 V., c. 119.
——— (*Ireland*), 26 & 27 V. cc. 27, 90.

II. When and How Contracted.

III. Conditions in Restraint of. *See McCullock v. McCullock*, 3 Giff. 606.

IV. Of Marriage Settlements.

V. Breach of Promise of.

VI. Jactitation of Marriage.

VII. Of Divorce and other Proceedings to put an end to Marriage, and of Judicial Separation.

(A) *Nullity of Marriage.*
(B) *Dissolution of Marriage.*
(C) *Judicial Separation.*
(D) *Connivance and Collusion.*
(E) *Condonation.*
(F) *Restitution of Conjugal Rights.*
(G) *Alimony.* See *ante*, Alimony.

VIII. Matrimonial Causes and Proceedings therein.

(A) *Of the Court for and of its Jurisdiction.*
(B) *Parties to suits in.*
(a) *Who to be in general, and death of Parties in.*
(b) *Co-respondent.*
(c) *Queen's Proctor and others intervening.*
(C) *Petition.*
(D) *Citation.*
(E) *Appearance.*
(F) *Affidavits.*
(G) *Particulars.*
(H) *Inspection and Production of Documents.*
(I) *Pleadings.*
(J) *Amendments.*
(K) *Staying and Setting out Proceedings.*
(L) *Payment of Money into Court.*
(M) *Change of Attorney.*
(N) *Cross Suits.*
(O) *Of the Trial.*
(a) *Place and Mode of Trial.*
(b) *Setting down and postponing cause.*
(c) *Proceedings at Trial.*
(d) *Evidence.*
(e) *Witness and Commissioners for examination of.*
(f) *Damages.*
(P) *New Trial.*
(Q) *Appeals.*
(R) *Fees and Costs.*
(a) *General rules and enforcement.*
(b) *Taxation of.*
(c) *Enforcement of Payment of.*
(d) *Security for Costs.*
(S) *Decrees and mode of enforcing of.*
(T) *Children, Custody of and access to.*
(U) *Suits in formâ pauperis.*
(V) *Contempts and Attachments.*
(W) *Of Compromising Suit.*
(X) *Effect of Divorce as to Property, Settlement, &c.*

I. Who may Intermarry.[1]

so as to avoid the penalty imposed by this statute must be of a permanent nature, and where it was of an unsubstantial character, only slightly varying from a stall, and unsuitable for the storing or protection of goods at night, the conviction of justices was affirmed. *Pope v. Whalley*, 13 W. R. 402. To constitute a sale in market overt, the goods sold must be present in the market during the whole of the transaction, from the making of the contract to the delivery. *Crane v. London Dock Company*, 10 Jur. N. S. 984; 12 W. R. 745; 10 L. T. N. S. 372—Q. B. 33 L. J. Q. B. 226. Stallage is a payment due to the owner of a market in respect of the exclusive occupation of a portion of the soil. *Yarmouth (Mayor, &c.) v. Groom*, 1 H. & C. 102; 32 L. J. Ex. 74. See *Capwell v. Cook*, 312, 31 L. J. M. C. 185, 11 C. B. 637. As to the removal of a market, see *Ellis v. Bridgenorth (Mayor, &c.)* 15 C. B. N. S. 52. 32 L. J. C. P. 273, 8 L. T. N. 668. As to right of sale in, see *Landaff Market v. Lyndon*, 30 L. J. M. C. 105; 8 C. B. 515. *Wiltshire v. Willett*, L. J. M. C. 811 C. B. 237. *Ashworth v. Heyworth*, 38 L. J. M. C. 91. As to a structure within stat. 10th Vic. c. 14, see *Pope v. Whalley*, 34 L. J. M. C. 676; 6 B. & S. 303.

[1] Marriages between persons within the prohibited degrees of consanguinity or affinity are absolutely null and void, to all intents and purposes whatsoever. 5 & 6 Wm. 4, c. 54, s. 2. The marriage of a man with his deceased wife's sister is absolutely void under Lord Lyndhurst's Act, and

II. When and how Contracted.

(A) *In Churches or Chapels.*[1]

III. Conditions in Restraint of. *See McCullock v. McCullock*, 3 Giff. 606.

IV. Of Marriage Settlements.[2]

V. Breach of Promise of.[3]

VI. Jactitation of Marriage.[4]

VII. Of Divorce and other Proceedings to put an end to Marriage, and of Judicial Separation.

(A) *Nullity of Marriage from Physical Causes.*[5]

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not merely voidable. *R. v. Chadwick*, 11 Q. B. 175. *Brook v. Brook*, 9 H. L. C. 193. *Coulson v. Allison*, De Gex, F. & J. 521. Affinity is not created by sexual intercourse without marriage. *Wing v. Taylor*, 30 L. P. & M. 258; 2 S. & T. 278.

[1] An incumbent of a district parish validly constituted has an exclusive right to celebrate marriages by banns, between persons resident within the district parish. *Tuckniss v. Alexander*, 32 L. J. Chanc. 794; 8 L. T. N. S. 821. Where a license is granted, in due form, for a marriage at a particular church, the incumbent is under no obligation to inquire whether there has been a sufficient residence to justify the granting of the license. *Tuckniss v. Alexander*, 32 L. J. Chanc. 794. To render a marriage null and void by reason of the ceremony having been performed three months after the banns had been completed, the parties must have done so wilfully. *Reg. v. C. W. Clarke*, C. C. R. 15 W. R. 796; 16 L. T. 429. As to misnomer in license, *see Kevon v. McMahon*, 30 L. P. & M. 612; S. & T. 230. The forms of entering into the contract of marriage are regulated by the *lex loci contractus*, the essentials of the contract depend upon the *lex domicilii*. *Brook v. Brook*, 9 H. L. Cas. 193. The Marriage Act, 26 Geo. 2 c. 33, only applies to the forms of certain marriages celebrated in this country. *Id.* Marriages of British subjects in British plantations are governed by the common law of England, unless otherwise enacted by the imperial legislature or that of the colony. *Limerick v. Limerick*, 32 L. J. Mat. Cas. 92; 11 W. R. 503; *Rooker v. Rooker and Newton*, 33 L. J. Mat. Cas. 42. The matrimonial Court of England will not (*inter se* the parties themselves) recognise a marriage duly contracted between members of a sect professing polygamous opinions, and in a country where such marriages were considered lawful. *Hyde v. Hyde and Woodmanser*, 1 L. R. P. & D. 130; 35 L. J. 57. To constitute a marriage in accordance with Scotch law, the agreement to marry must be deliberate and given mutually, with the view of creating thenceforth the relation of husband and wife, and it is not necessary that a contract so made should be followed by cohabitation. *Yelverton v. Longworth*, 11 L. T. N. S. 118. —H. L. Proof of leaving to be married at Gretna Green and living together many years is evidence of marriage. *Patrickson v. Patrickson*, 35 L. J. P. & M. 48. Where a party to a marriage had been born and bred a Protestant, and had done no act to denote a change of his religious persuasion, he was held to be a Protestant within the 19 Geo. 2. c. 13, s. 1. *Yelverton v. Longworth*, 10 Jur. N. S. 1209; 11 L. T. N. S. 118—H. L.

[2] In an action by solicitors against husband and wife for the costs of preparing their marriage settlement, the wife having been a minor at the time of the marriage:—*Held*, first, that a marriage settlement is a necessary, and therefore an infant may bind herself by a contract to pay the cost of preparing it. *Helps v. Clayton*, 10 Jur. N. S. 1184; 34 L. J. C. P. 1; 13 W. R. 161; 11 L. T. N. S. 476. A deed executed in consideration of a future cohabitation between two persons who are incapable of contracting a legal marriage is invalid. *Ford v. De Pontès*, 30 Beav. 572.

[3] To sustain such an action there should be evidence to prove that the contract was mutual, and that the plaintiff had either directly or inferentially by conduct assented to the proposal. *Vineall v. Viness*, 4 F. & F. 344. But now by the 32 & 33 Vic. c. 68, parties in such actions shall be competent to give evidence, but must be corroborated by some other material evidence. The court refused leave to add a count for non-payment of arrears of an annuity for the support of a child. *Sherratt v. Webster*, 9 Jur. N. S. 629; 8 L. T. N. S. 254—Exch. It is not a misdirection in the breach of promise, followed by seduction, for the judge to tell the jury that they might take into consideration not only plaintiff's loss in not becoming the wife of defendant, but also plaintiff's feelings of mortification and her diminished chances of marriage. *Berry v. Da Costa*, 1 L. R. C. P. 331; 35 L. J. 191.

[4] A suit of this description can only be instituted by one of the parties to the pretended marriage. *Campbell*, 31 L. J. P. & M. 60.

[5] As a general rule a decree of nullity of marriage on the ground of malformation will not be granted unless the existence of incurable malformation is proved by a medical man who has examined the person of the respondent. *T—— v. M——*, 35 L. & J. D. & M. 10; 1 L. R. P. & D. 31. In a suit of nullity, by reason of the impotence of the

(B) *Dissolution of Marriage.*[1]

(C) *Judicial Separation.*

(*a*) *When maintainable, and causes.*[2]

husband, the evidence of the wife being entirely unsupported by the medical witnesses, the court dismissed the petition. *Tavernor v. Ditchfield*, 35 L. J. P. & M. 51; *Lewis v. Hayward*, 35 L. J. P. & M. 105; *Stag v. Edgecombe*, 9 Jur. N. S. 698; 32 L. J. Mat. Cas. 153; 12 W. R. 19; 8 L. T. N. S. 643. In a suit of nullity of marriage on the ground of physical incapacity, each party has a right to nominate two medical inspectors to examine him or her. *B*——, f. c. *C*—— *v. C*——, 32 L. J. Mat. Cas. 135. The presumption of impotency from the fact of non-consummation does not arise where the cohabitation has been less than three years. *Marshall*, f. c. *Hamilton v. Hamilton*, 10 Jur. N. S. 853; 33 L. J. Mat. Cas. 159; 13 W. R. 108; 10 L. T. N. S. 787. *D*—, f. c. *F*— *v. F*—. 34 L. J. N. S. 66; *Hayward v. Hayward*, H. L.; 35 L. J. P. & M. 105. Petition by a woman for nullity of marriage on the ground of her husband's impotency, dismissed by reason of the lapse of time, coupled with an indirect motive in bringing the suit. *Marriott*, f. c. *Burgess v. Burgess*, 10 Jur. N. S. 885; 33 L.J. Mat. Cas. 203; 10 L. T. N. S. 847. *E*—— *v. T*—— f. c. *E*——, 3 S. & T. 312; 33 L. J. Mat. Cas. 37; 12 W. R. 444. *Ewens v. Tytherleigh* f. c. *Ewens*, 9 Jur. N. S. 1301; 9 L. T. N. S. 424; *D*— *v. D*—, 1 L. R. P. & D. 127; 35 L. J. 51. In a suit for nullity instituted by the father of one of the parties to the pretended marriage, it is necessary that it should appear upon the face of the petition that he is proceeding in his own right and not as guardian. *Wells v. Cottum*, f. c. *Wells*, 3 S. & T. 364; 33 L. J. Mat. Cas. 41: 10 L. T. N. S. 138.

[1] It being the duty of a husband to give the wife the protection and comfort of his home and society as far as his position will admit, he will not be entitled to a dissolution of marriage on the ground of his wife's adultery, if it appear that he has failed in such duty. *Jeffreys v. Jeffreys and Smith*, 10 Jur. N.S. 572; 33 L. J. Mat. Cas. 84; 12 W. R. 809; 10 L. T. N. S. 309. *Davies v. Davies and Hughes*, 3 S. & T. 221. A decree of dissolution of marriage will not be granted when the adultery has been brought about by persons acting on behalf of the petitioner, although without his knowledge. *Picken v. Picken and Simmonds*, 34 L. J. Mat. Cas., 22. In a suit by wife for dissolution on the ground of bigamy and adultery, the conviction for bigamy may be proved by affidavit, where the production of oral testimony would be attended with considerable expense. *Macartney v. Macartney*, L. R., P. & D. 259; 36 L. J. 38. To constitute legal cruelty, so as to entitle a wife who has established the fact of adultery against her husband to dissolution of marriage, there must be something more than coldness, want of affection, neglect, &c. And the additional fact of the husband having carried on an adulterous intercourse with a servant under his own roof will not constitute such cruelty. *Cousen v. Cousen*, 11 Jur. N.S. 656. *Hughes v. Hughes*, 35 L. J. P. & M. 94; 1 L. R. P. & D. 219. It is clearly settled that to render the imparting of the venereal disease to a wife legal cruelty it must be done *wilfully*. *Brown v. Brown*, 1 L. R. P. & D. 46. Cruelty may be the mental suffering caused by the husband openly avowing to his wife his passion for another woman, and his determination not to give her up. *Knight v. Knight*, 34 L. J., M. & P. 112. *Rowley v. Rowley*, 1 L. R., 1 H. L. Sc. 63. Where a husband has deserted his wife for two years and upwards, and has been guilty of adultery, his offer to return is no bar to her suit for dissolution of marriage, as she is not bound to condone his adultery. *Basing v. Basing*, 10 Jur., N. S., 806; 33 L. J., Mat. Cas., 150; 10 L. T., N. S., 756. The desertion must be wilful and without reasonable excuse. *Davies v. Davies and Hughes*, 9 Jur., N. S. 828; 32 L. J., Mat. Cas. 111; 11 W.R. 402; 8 L. T., N. S. 703. *Boreham v. Boreham*, 1 L. R. P. & D. 77.

[2] Delay is, *per se*, no bar to a suit for judicial separation, but, in conjunction with other circumstances, may induce the court to refuse a decree. *Boulting v. Boulting*, 10 Jur., N. S., 182; 33 L. J., Mat. Cas., 33; 12 W. R. 389. A judicial separation granted on the ground of the wife's cruelty, although the parties had continued to live together in the same house until the hearing. *Forth v. Forth*, 36 L.J.M.& N. 122. And the court has power to order the husband to make a provision for the wife. *Pickard v. Pickard*, 33 L. J., Mat. Cas., 158; 10 Jur., N. S., 830; 10 L. T., N. S., 789. A husband who has communicated to his wife a venereal disease will be presumed, in the absence of evidence to the contrary, to have been aware of the state of his health at the time, and therefore to have done the act wilfully. *Brown v. Brown*, 35 L. J. M. & P. 13. *Boardman v. Boardman*, L. R., 1 P. & D. 233. Reasonable ground for apprehending personal violence suffices. *Cooke v. Cooke*, 9 Jur., N. S., 754; 32 L.J., Mat. Cas., 154; 8 L. T., N. S., 644. Where one act of violence is of such a character as to found a reasonable apprehension of further violence, the wife

(D) *Connivance and Collusion.*[1]

(E) *Condonation.*[2]

(F) *Restitution of Conjugal Rights.*[3]

VIII. Matrimonial Causes and Proceedings therein.

(A) *Of the Court for and of its Jurisdiction.*[4]

(B) *Parties to suit.*[5]

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is entitled to the protection of the court. *Reeves v. Reeves*, 3 S. & T. 139; 32 L. J., Mat. Cas., 178; 8 L. T. N. S., 174. *Boulting v. Boulting*, 3 S. & T. 329; 10 Jur., N. S., 182; 12 W. R. 389; 9 L. T., N. S., 779. A petitioner, whose petition for judicial separation, on the ground of cruelty, has been dismissed for defect of proof, is estopped from setting up the same charges of cruelty in a suit for dissolution. *Finney v. Finney*, 37 L. J. P. & M. 43. *Williams v. Williams*, 35 L. J. P. & M. 85. Enforced prostitution is cruelty. *Coleman v. Coleman*, 25 L. J., P & M., 37. Where the issue of cruelty is submitted to a jury, the court will not grant a new trial unless it is satisfied that there was error or miscarriage on the part of the jury. *Scott, v. Scott*, 9 Jur., N. S., 1251; 33 L. J., 12 W. R. 126; 9 L. T., N. S., 454. Wife's evidence of unnatural connexion had, or attempted to be had, with her by the husband,—*Held*, not sufficient to establish such a charge. *N— v. N—*, 9 Jur., N.S., 1203; 9 L. T., N. S., 265—Div. The facts which constitute desertion, as ground for a decree, vary with the circumstances and mode of life of the married persons. *Williams v. Williams*, 10 Jur., N. S., 870; 33 L. J., Mat. Cas., 172; 10 L. T., N. S., 846. *Nott v. Nott*, 36 L. J. P. M. 10. A deed of separation never acted upon does not deprive a husband's subsequent separation from his wife against her will of the character of desertion. *Cock v. Cock*, 10 Jur., N. S., 806; 33 L. J., Mat. Cas., 157; 10 L. T., N. S, 726. *Crabb v. Crabb*, 37 L. J. P. & M. 42. Where the intention of a husband clearly was not to live with his wife (he was, in fact, carrying on an adulterous intercourse before and after marriage), the court held that it amounted to desertion. *Graves v. Graves*, 3 S. & T. 350; 10 Jur., N. S., 546; 33 L. J., Mat. Cas., 66; 1016; 10 L. T., N. S., 273. *Mallinson v. Mallinson*, 1 L. R. P. & D. 93. *Baker v. Baker*, 32 L. J., Mat. Cas., 145.

[1] A husband wilfully abstaining from taking any steps to prevent an adulterous intercourse, which from what passes before his eyes he cannot but believe or reasonably suspect, is guilty of connivance. *Gipps v. Gipps and Hume*, 10 Jur., N. S., 641; 33 L. J., Mat. Cas., 161; 10 L. T., N. S., 735—H. L., 11 H. L. C. 1; 38 L. T. 116. *Baylis v. Baylis*, 36 L. J. P. & M. 89. Connivance is a knowledge of, and acquiescence in, the misconduct complained of. *Boulting v. Boulting*, 3 S. & T. 329; 10 Jur. N. S. 182; 33 L. J., Mat. Cas., 33; 9 L. T., N.S., 779. 37 L. T. 329. *Morris v. Morris*, 31 L. J. P. & M. 69. *Glenne v. Glenne*, 33 *id.* 33. To establish collusion it is necessary to prove that there was some understanding or agreement between the petitioner and respondent. *Gethin v. Gethin*, 31 L. J, P. & M., 43; *Lloyd v. Lloyd*, 30 *id.* 97. *Todd v. Todd*, 35 L. J. P. & M. 34.

[2] To establish condonation, it is not sufficient to prove that a husband returned to cohabitation with his wife after he was in possession of evidence of her adultery; it is necessary also to prove that he gave credit to that evidence. *Ellis v. Ellis*, 34 L. J., P. & M. 100; 4 S. & T. 154. *Norris v. Norris*, 30 L. J., P. & M. 111. *Dempster v. Dempster*, 31 *id.* 433. Condoned adultery may be revived, so as to found a sentence of dissolution. *Winscom v. Winscom and Plowden*, 3 S. & T. 380; 10 Jur., N. S. 321; 33 L. J. P. & M. 45. *Hughes v. Hughes*, 1 L. R., 1 P. & D. 219; 35 L. J. 94.

[3] In a suit for restitution of conjugal rights, the court has no jurisdiction to make a decree until the marriage has been formally proved, although the respondent may have filed an answer not taking issue on the marriage. *Scott v. Scott*, 34 L. J., Mat. Cas., 23. *Pearson v. Pearson*, 33 L. J., P. & M. 156. An agreement between husband and wife to live separate is no bar to such a suit. *Spering v. Spering*, 3 S. & T. 211. 32 L. J. P. & M. 116. *Hunt v. Hunt*, *id.* 165. The answer to a petition for restitution of conjugal rights, alleged the impotence of the petitioner. The court refused to allow the issue joined to be tried by a jury, although the respondent asked for one. *Ricketts v. Ricketts*, 35 L. J., P. & M. 92, Where both parties had been guilty of adultery, the court would, at the suit of one of them, make a decree for restitution of conjugal rights. *Seaver v. Seaver*, 2 S. & T. 665, App. 11.

[4] Where a husband was domiciled in Ireland, and had only a temporary abode in England at the date of filing the petition, and the wife appeared and submitted to the jurisdiction of the court, the court dissolved their marriage, which had been celebrated in Ireland, on the ground of adultery by the wife in England and on the Continent. *Callwell v. Callwell and Kennedy*, 3 S. & T. 259, *Foster v. Foster and Berridge*, 4 B. & S. 187; 10 Jur., N. S., 254.

[5] A husband petitioning for a divorce must obtain leave to proceed without making a co-respondent, although the petition only

(*a*) *Who to be in general, and Death of parties in.*[1]

(*b*) *Co-respondent.*[2]

(*c*) *Queen's Proctor and others intervening.*[3]

(C) *Petition.*[4]

(D) *Citations.*[5]

(E) *Appearance.*[6]

(F) *Affidavits.*[7]

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charges adultery with a person unknown. *Pitt v. Pitt*, 37 L. J., P. & M. 24. *Codrington v Codrington and Anderson*, 3 S. & T. 368; 33 L. J., Mat. Cas., 62; 10 L. T., N. S., 130, In a suit on the ground of the wife's adultery, the petitioner must make every man against whom adultery is alleged in the petition a co-respondent, unless on special grounds he is excused by the court from doing so. *Carryer v. Carryer*, 34 L. J., P. & M. 47; 4 S. & T. 94.

[1] A suit for dissolution abates on death of petitioner. *Grant v. Grant*, 31 L. J., P. & M. 174; 2 L. J. T. 522, respondent. *Brocas v. Brocas*, 30 L. J., P. & M. 172.

[2] That when a co-respondent dies pending a suit for dissolution of marriage, a motion should be made for leave to strike his name out of the proceedings. *Sutton v. Sutton*, 32 L. J., Mat. Cas., 156. *Peters v. Peters*, 3 S. & T. 264.

[3] The 23 & 24 Vic. c. 144, s. 7, enables any one of the public to give the court between the decree *nisi* and the decree absolute for a divorce, information to relieve it from being misled on the subject of a divorce petition. That section confers on the Queen's Proctor the power to intervene in a case of collusion, but in that alone. *Lantour v. Her Majesty's Proctor*, 10 H. L. Cas. 685. *Barnes v. Barnes*, 37 L. J., P. & M. The Queen's Proctor cannot, without the leave of the court, intervene in his official capacity against a decree *nisi* for dissolution of marriage being made absolute. *Gray v. Gray*, 30 L. J. R. P. M. & A. 96. The court has no jurisdiction to award the Queen's Proctor his costs under 23 & 24 Vic. c. 144, s. 7, unless he intervenes in his official capacity and proves collusion. *Id.* See *Masters v. Masters*, 34 L. J., P. & M. 7; and see *Harding v. Harding*, 34 L. J., P. & M. 9. The Queen's Proctor is entitled to cross-examine both parties on the issues raised by him of collusion and adultery of wife, although he has not traversed the allegation of cruelty. *Boardman v. Boardman*, 1 L. R., 1 P. & D. 233. *Sheldon v. Sheldon*, 13 W. R. 507.

[4] Adultery as the ground of a petition should be distinctly alleged. It is not sufficient to allege information and belief. *Spilsbury v. Spilsbury*, 32 L. J., P. & M. 126; 9 L. T., N. S. 23. *Ambler v. Ambler and Hoghton*, 32 L. J. 6; 11 W. R. 111; 7 L. T., N. S. 339. *Forman v. Forman and Davis*, 32 L. J. 80. An answer to a petition for restitution of conjugal rights, denying that the respondent withdrew from cohabitation without just cause, should state the cause of such withdrawal. *Ward v. Ward*, 32 L. J., P. & M. 120. In a suit for nullity instituted by the father of a minor, it must appear whether the father has instituted the suit in his own right or as guardian of the minor. *Wells v. Cottam*, 33 L. J. R., P. M. 41; 3 S. & T. 364. When leave is granted to prove a petition by affidavit, the order granting such leave must be drawn up before hearing, and should be filed with the other papers. *Webb v. Webb*, 32 L. J. Mat. Cas., 63.

[5] If the name of a respondent is misspelt in a citation, and there is no appearance, the court will not order that service of such citation shall be deemed sufficient, but a fresh one must be extracted. *Cotton v. Cotton and Cinnis*, 32 L. J., P. & M., 133. Where the address of a respondent is unknown, he may be described in the citation as late of the last known place of his residence. *Forster v. Forster*, 32 L. J., P. & M., 134. Personal service is essential. *Milne v. Milne*, 34 L. J., P. & M., 143. *De Niceoille v. De Niceoille*, 37 L. J., P. & M. 43. Where a respondent is cited by advertisement, and leave to amend the petition is granted, the amended petition need not be advertised. *Smith v. Smith*, 32 L. J. P. & M., 145; 9 L. T., N. S., 118.

[6] An appearance may be entered at any time within twenty-one days from the service of the citation. *Child v. Child*, 33 L. J. P. & M., 156. A respondent in a suit for dissolution of marriage having entered an absolute appearance, cannot afterwards plead to the jurisdiction of the court. *Foster v. Foster and Berridge*, 3 S. & T. 144; 9 L. T., N. S., 147. If a respondent intends to plead to the jurisdiction of the court, she should appear under protest. *Id. Garstin v. Garstin*, 34 L. J., P. & M. 45. A guardian cannot appear and plead on behalf of a minor without having been duly elected and appointed. *Webb v. Cottam*, 32 L. J., P. & M. 41., 3 S. & T. 364.

[7] Affidavits in a cause must be entitled strictly as the cause itself is entitled. *Croomie v. Croomie*, 32 L. J. P. & M. 125; 9 L. T. N. S., 23; 3 S. & T. 219. An affidavit verifying a petition should not be entitled in the cause, but in the matter of, &c. 36 P. & M., L. J. 50. Where affidavits in support of a motion omit to state material

(G) *Particulars.*[1]

(H) *Inspection and Production of Documents.*[2]

(I) *Pleadings.*[3]

(J) *Amendments.*[4]

(K) *Staying and Setting aside Process.*[5]

(L) *Payment of Money into Court.*[6]

(M) *Change of Attorney.*[7]

(N) *Cross Suits.*[8]

(O) *Of the Trial.*

(*a*) *Place and Mode of Trial.*[9]

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facts, which facts existed at the date when the affidavit was made, the court may allow such motion to stand over. *Serrell v. Serrell and Bamford*, 2 S. & T. 636; 7 L. T. N. S., 221.

[1] A general allegation of adultery, not specifying person, place, or time, is bad, and will be struck out. *Porter v. Porter*, 33 L. J., P. & M. 207. Particulars may be ordered and the petition amended by setting out such particulars. *Codrington v. Codrington and Anderson*, 3 S. & T. 368; 33 L. J., P. & M., 53; 10 L. T., N. S., 139.

[2] The court ordered the papers to be produced on application of the wife, and her attorney to be at liberty to take copies. *Shaw v. Shaw*, 2 S. & T. 642. *Pollard v. Pollard*, 3 *id.* 613.

[3] A respondent in a suit for dissolution of marriage having entered an absolute appearance, cannot afterwards plead to the jurisdiction of the court. *Forster v. Forster and Berridge*, 3 S. & T. 144; 9 L. T., N. S., 147. To a charge of cruelty, an answer alleging that the use of force was justified by the conduct of the petitioner is bad. The nature of the conduct should be stated *Shaw v. Shaw*, 31 L. J. R., N. S., P. M. & A. 35; 2 S. & T. 515. *Leete v. Leete*, 31 L. J., P. & M. 121; 2 S. & T. 568. *Green v. Green*, 33 L. J., P. & M. 64. In answer to a petition for desertion, the respondent should state succinctly the facts or cause. *Hill v. Hill*, 33 L. J., P. & M. 187. In a petition for divorce on the ground of adultery, it is not competent to plead the ante-nuptial incontinence of the respondent. *Fitzgerald v. Fitzgerald*, 32 L. J. R. N. S., P. M. & A. 12.

[4] The court will not order a pleading to be amended unless it is so framed as to embarrass the opposite side. *Green v. Green*, 33 L. J., P. & M. 83. *Wallace v. Wallace, Guiter and Macnamara*, 9 Jur., N. S., 134; 32 L. J., P. & M. 47. *Bunyard v. Bunyard*, 32 L. J., P. & M. 176. The court allowed a petition for judicial separation to be amended by striking out a charge of adultery, in order that the petitioner's evidence might be admitted in support of the charge of cruelty. *Hudson v. Hudson*, 33 L. J., P. & M., 5. *Griffith v. Griffith*, 3 S, & T. 355; 33 L. J., P. & M., 81; 10 L. T., N. S., 308. Where a co-respondent's Christian name was stated to be John instead of William, the court allowed the citation and petition to be amended. *Reuss v. Reuss and Applegarth*, 32 L. J., P. & M., 168. If a respondent, misnamed in a petition, has been served, but has not appeared, the petition, when amended, must be re-served. *Kisch v. Kisch*, 33 L. J., P. & M., 115.

[5] Although under 20 & 21 Vic. c. 85, s. 43, the court has no general power to order the attendance of the petitioner, and may stay proceedings till he appears. *Pollock v. Pollock*, 32 L. J., P. & M., 28, 2 S. & T. 648.

[6] The court has no power to order immediate execution for the recovery of damages awarded against the co-respondent, nor to order that such damages be paid into court. *Pounsford v. Pounsford*, 30 L. J. R., P. & M., 188; 2 S. & T. 389. See *Munt v. Munt*, 30 L. J., P. & M., 134.

[7] Where an order has been made for the change of the attorney in a suit, the order must be drawn up and filed in the registry before any step can be taken by the new attorney. *Grice v. Grice and Penfold*, 32 L. J., P. & M. 134.

[8] Where the same issues are raised in cross suits, the court will stay one, and that without reference to their relative positions in the cause list. *Osborne v. Osborne and Martelli*, 9 L. T., N. S., 456; 33 L. J., P. & M. 38.

[9] The court will not, on the motion of respondent, order the mode of trial where the pleadings are incomplete; but it will decide to be tried by a jury where the greater part of the witnesses reside at a great distance from London. *Richard v. Richard*, 30 L. J., P. & M. 48. A suit will not be directed except for some sufficient reason to be tried before the full court. *Beven v. Beven*, *id.* 23. The order for leave to prove a petition by affidavit should be drawn up and filed before the hearing. *Webb v. Webb*, 32 *id.* 63; *see* 34 *id.* 17. *Broadwood v. Broadwood and St. Albans*, 34 L. J., P. & M., 11. *Gough v. Gough and Baynton*, 32 L. J., P. & M., 128, *see Rowley v. Rowley*, 33 *id.* 54. The court will generally, at the request of either of the parties, allow a jury. *Taylor v. Taylor*, 32 L. J., P. & M., 126; 9 L. T., N. S., 24. Where an issue is ordered to be tried at the assizes, under sect. 40 of 20 &

(*b*) *Setting down and Postponing Cause.*[1]

(*c*) *Proceedings at Trial.*[2]

(*d*) *Evidence.*[3] By 32 and 33 Vic. c. 68, s. 3, parties and their husbands and wives are competent to give evidence in suits for adultery.

(*e*) *Witnesses and Commissioners for Examination of.*[4]

(*f*) *Of Damages.*[5]

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21 Vic. c. 85, it should be framed as an issue sent by the Court of Chancery. *Hogg v. Hogg*, 32 L. J., P. & M., 209. The court has no power to direct a trial at assizes without a jury. *Bushell v. Blenhow*, 35 L. J., P. & M. 75. The respondent, in answer to a suit for restitution of conjugal rights, pleaded the impotency of the petitioner. The court, upon the application of the petitioner, ordered the cause to be tried by a jury, notwithstanding the respondent's objection to that mode of trial. 32 L. J., P. & M., 12. The jury may be asked for a verdict upon issues of fact raised by pleas at the discretion of the court, as an assistance to the court in forming its opinion, but their verdict may be dispensed with. *Narracott v. Narracott*, 33 L. J. P., N. S., P. & M., 132; 3 S. & T. 408.

[1] If a petitioner delays filing the record and setting down the cause, for the space of one month from the final settling of the record, the respondent may file the record and set the cause down as ready for trial (Rule 24); or the respondent may take a rule to show cause why the petition should not be dismissed. *Stuart v. Stuart*, 3 S. & T., 210, 32 L.J.P. & M., 110. *Hare v. Hare*, 3 S. & T. 218. The court will not postpone the trial of a cause on the application of one of the parties if no notice of the motion has been given to the other party. *Hepworth v. Hepworth*, 30 L. J. R., N. S., P. & M., 2 S. & T. 514, *id.* 30 L J., P. & M. 88.

[2] If a respondent's counsel calls witnesses, the court will expect him to open his own case, and comment on the petitioner's evidence, before he calls his own witnesses. If a co-respondent's counsel examines a witness called by the respondent, he can do so only by way of examination in chief, adopting the witness as his own. *Glennie v. Glennie and Bowles*, 3 S. & T. 109; 7 L. T., N. S., 696. Where, in a suit for dissolution by husband against wife, the wife pleaded that the marriage was null, the court held that the petitioner had the right to begin. *Serrel v. Serrel*, 31 L. J., P. & M. 55; 2 S. & T. 422. *See* 3 *id.* 361.

[3] Bigamy may be proved by affidavit where there has been a conviction. *Macartney v. Macartney*, 37 L. J., P. & M. 38. Evidence of acts of adultery, subsequent to the date of the latest act charged in the petition, is admissible. *Boddy v. Boddy*, 30 L. J., P. & M. 23. Evidence to prove a species of cruelty not pleaded in the petition is not admissible. *Jewell v. Jewell*, 2 S. & T. 573. The only evidence in support of a charge of adultery against a husband in a suit for judicial separation was the testimony of the alleged paramour, a woman of loose character:—*Held*, not sufficient. *Ginger v. Ginger*, 35 L. J. P. & M. 9; 1 L. R. P. & D. 37. But in a suit by a husband for dissolution of marriage, the only evidence of the respondent's adultery being admissions made by her, there being no ground to suspect collusion, dissolved the marriage. *Williams v. Williams*, 35 L. J. P. & M. 8.

[4] Before issue joined, an application for a commission to examine witnesses is premature. *Shaw v. Shaw*, 2 S. & T. 642. *Brown v. Brown*, 33 L. J., Mat. Cas. 203. Where the same issues are raised in cross suits, and an order is made for a commission to examine witnesses, it will be drawn up in such a form that the evidence will be admissible in both suits. *Osborne v. Osborne and Martelli—Osborne v. Osborne*, 3 S. & T. 327; 33 L. J., P. & M. 38. The court will refuse to issue a commission to examine witnesses on the ground of unreasonable delay in making the application. *Stone v. Stone and Appleton*, 34 L. J., N. S., 33. The court has only power to order that the petitioner attend on the hearing of the petition. *Pollack v. Pollack*, 32 L. J., Mat. Cas., 28.

[5] A petition for dissolution of marriage will be allowed to be amended by inserting a claim for damages against the co-respondent; but, as a rule, the court requires an explanation of the original omission. *Bartlett v. Bartlett and Balmano*, 34 L. J., P. & M. 64. In an assessment of damages against a co-respondent, the measure of damages is the value of the wife of whom the husband has been deprived. *Cowing v. Cowing and Wollen*, 33 L. J., P. & M. 149. As a general rule, evidence of a co-respondent's means is inadmissible. *Id. Billingay v. Billingay*, 35 L. J., P. & M. 84. *Forster v. Forster and Berridge*, 3 S. & T. 158; 9 L. T., N. S., 150. There is nothing to preclude the court from entertaining an application for the settlement of the damages recovered from the co-respondent after, as well as before, the decree *nisi* has been made absolute. *Billingay v. Billingay and Thomas*, 1 L. R. P. & D. 168; 35 L. J., P. & M. 84. A co-respondent who has appeared, but filed no answer, will not be allowed to cross-examine petitioner's witnesses, or to address the jury on the question of damages; but after the jury have assessed the damages, he will be allowed to recall petitioner's witnesses and cross-examine them on the question of costs, and to address the court on the question of costs. *Lyne v. Lyne and Blackney*, 37 L. J., P. & M. 9; 17 L. T. 297; 16 W. R. 159.

(P) *New Trial.*[1]

(Q) *Appeal.*[2]

(R) *Fees and Costs.*

(*a*) *General Rules.*[3]

The court cannot recognise an agreement made between the counsel of the petitioner and co-respondent in respect of the amount of damages to be paid, but is bound by the assessment of the jury. *Callwell v. Callwell and Kennedy*, 3 S. & T. 259.

[1] A rule for a new trial upon the ground that a verdict is against the weight of evidence will not be granted, unless the court is satisfied with reasonable certainty that there has been error or miscarriage. *Scott v. Scott*, 9 Jur., N. S., 1251; 33 L. J., P. & M. 1; 9 L. T., N. S., 454. *Miller v. Miller*, 2 L. J. C. 427. *Gether v. Gether, id.* 560. *Stone v. Stone*, 34 L. J., P. & M. 33. A rule for a new trial will not be granted upon affidavits which do not show surprise, but merely state that during the trial, and after the close of the applicant's case, material evidence had come to his knowledge. *Id.* See *Jago v. Jago and Graham*, 3 S. & T. 103; 7 L. T., N. S., 645. Where a new trial is granted on the application of a wife, the court cannot impose upon her the terms of payment of costs. *Nicholson v. Nicholson and Radcliffe*, 32 L. J., P. & M., 127; 9 L. T., N. S., 118.

[2] An appeal lies to the House of Lords, and not to the full court, from all decrees or orders made by the judge ordinary, as representing the full court, by force of the 23 & 24 Vic. c. 144. *Sidney v. Sidney*, 1 L. R. P. & D. 78; 35 L. J. P. & M. 46. See *Pagani v. Pagani*, 1 L. R., P. & D. 223; 35 L. J. P. & M. 87. Where an appeal is lodged from the decision of the judge-ordinary within the three months, but not prosecuted, the court will not allow at the hearing an objection on the ground of delay. *Ginger v. Ginger*, 35 L. J. P. & M. 93; where judgment of the Lords says nothing as to costs, P. & M. has no jurisdiction to decide the question of costs; it can only order the decree of the House of Lords to be recorded. *H. v. H.*, 36 L. J. P. & M. 78.

[3] By sect. 51 of the 20 & 21 Vic. c. 85, the court which hears the suit has absolute authority over costs, and no appeal as to costs only lies. *Glennie v Glennie and Bowles*, 3 S. & T. 109; 7 L. T., N. S., 696. *Id.* The costs of a wife in setting up an unfounded defence to a suit for dissolution, disallowed, and her costs confined to such as would have arisen had she merely traversed the adultery. *Clark v. Clark, Perren and Cumins*, 34 L. J. P. & M. 71. Co-respondent neither condemned in nor allowed costs, where the adultery of the co-respondent was proved, the petition being dismissed by reason of the petitioner's adultery, &c. See *Seddon v. Seddon and Doyle*, 31 L. J. 101. *Hick v. Hick and Kitchen*, 34 P. & M. *Id.* The rule that the husband is liable for the wife's costs does not apply to a suit of nullity of marriage, where the *de facto* husband and wife are both made respondents and the marriage is declared null. *Wells v. Cottam*, 34 L. J. R. N. S. P. M. & A. 12; 3 S. & T. 593. The question of condemning a co-respondent in costs, where the adultery is found, is always in the discretion of the court. *Coddrington v. Coddrington and Anderson*, 34 L. J. P. & M. 60. In a suit for dissolution of marriage, the court, if the adultery is proved, has power to order all the costs to be paid by the co-respondent, although the court does not decree dissolution of the marriage. *Forster v. Forster and Berridge, in re*, 4 B. & S. 187; 10 Jur., N. S. 254. *See Winscomb v. Winscomb and Plowden*, 3 S. & T. 380; 10 Jur., N. S. 321; 33 L. J. P. & M. 45. *Conradi v. Conradi and Flashman*, 1 L. R. P. & D. 153; 35 L. J. 49. A wife having established a good defence in law to her husband's petition, will be entitled to have her costs taxed, though she may have omitted to take the precaution of having a sum of money paid into court, or security given. *Ellyatt v. Ellyatt, Taylor and Halse*, 10 Jur., N. S. 1035; 33 L. J. Mat. Cas. 137; 11 L. T., N. S. 44. *Gough v. Gough and Baynton*, 33 L. J. P. & M. 136. *See Burrough v. Burrough*, 31 L. J. P. & M. 126. A wife, pending a suit by her for a judicial separation, returned to cohabitation:—*Held*, that the petition could be dismissed only upon payment of the wife's costs. *Cooper v. Cooper*, 3 S. & T. 392; 33 L. J. 71; 10 L. T., N. S. 275. *Smith v. Smith*, 33 L. J. P. & M. 11. *Adams v. Adams*, 1 L. R., 1 P. & D. 333; 36 L. J. P. & M. 62. *See Whitmore v. Whitmore*, 35 L. J. M. & P. 52. In a suit for nullity, instituted by the father of the pretended husband in his own right, the alleged wife has no right to an order for the payment of her costs before the hearing. *Wells v. Cottam*, 3 S. & T. 364; 33 L. J. P. & M. 41; 10 L. T., N. S. 138. Where the Queen's Proctor intervenes, and he fails to prove either collusion, or the adultery of the petitioner, and the court makes the decree *nisi* absolute, the court has no power to condemn the Queen's Proctor in costs. *Wilson v. Wilson*, 1 L. R. P. & D. 180. *Joyce v. Joyce*, 33 L. J., Mat. Cas. 200. *Latour v. Queen's Proctor*, 33 L. J. P. & M. 89; 10 L. T., N. S. 198. When an application is made in court which might have been made in chambers, the applicant, if successful, is only entitled to such costs as would have been incurred in chambers. *Higgs v. Higgs and Hopkins*, 32 L. J., Mat. Cas. 64. *See Bancroft v. Bancroft*, 13 W. R. 506. The 159th rule (1866) is not absolutely imperative upon the court; but no

(*b*) *Taxation of.*[1]

(*c*) *Enforcement of Payment.*[2]

(*d*) *Security for.*[3]

(S) *Decrees and Mode of Enforcing of.*[4]

(T) *Children—Custody of and Access to.*[5]

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application will be admitted after the hearing subsequently, unless under very special and meritorious circumstances. *Conradi v. Conradi*, 35 L. J. M. & P. 49. It seems that when, upon the application of a wife, a cause is tried by a special jury, the court may in its discretion refuse to allow the wife the costs of the special jury. *Scott v. Scott*, 32 L. J. P. & M. 40. In a suit by husband for dissolution of marriage the jury were discharged without giving a verdict: the cause was again set down for trial, but the petitioner did not proceed with it and the petition was dismissed:—*Held*, that the co-respondent was entitled to his costs, the witnesses to the adultery not having been believed. *Whitmore v. Whitmore and Brettell*, 1 L. R. P. & D. 25. *See Bancroft v. Bancroft and Rumney*, 34 L. J. P. & M. 144. *Wight v. Wight and Field*, L. R., 1 P. & D. 318; 16 L. T. 300; 36 L. J. P. & M. 129. Where a new trial is granted on the application of the wife, the court cannot impose upon her the terms of payment of costs if she has no means, but the husband must pay the costs of both parties. *Nicholson v. Nicholson*, 32 L. J. P. & M. 127; 3 S. & T. 214. *Wood v. Wood*, 1 L. R. P. & D. 467; 37 L. J. P. & M. 25; 18 L. T. 110.

[1] The court will not interfere with the discretion of the registrar in respect of particular items allowed or disallowed on taxation, unless it can be shown that the taxation proceeded on an erroneous principle. *Cooke v. Cooke*, 3 S. & T. 374; 33 L. J. P. & M. 79; 10 L. T., N. S. 141. *Allen v. Allen*, 30 L. J. P. & M. 9; 2 S. & T. 107. The costs of a party's appearance on a motion will not be allowed if such appearance is unnecessary, although he may have received notice to appear from the opposite side. *Frebout v. Frebout*, 30 L. J. P. & M. 214. Refresher fees will be allowed. *Stoate v. Stoate*, 30 L. J. P. & M. 214.

[2] Where a party to a suit has failed to obey an order for the payment of costs, the court will not upon his application give judgment until the costs be paid, or a valid reason for their non-payment be given. *Chichester v. Mure*, 32 L. J. P. & M. 120. An attachment will not be granted unless a copy of the order is annexed to or recited in the affidavit of service. *Lidmore v. Lidmore*, 32 L. J. Mat. Cas. 134. When an order for payment of a sum of money within a specified time is made, and personally served, a personal demand for payment is unnecessary for attachment. *See Nicholls v. Nicholls*, 2 S. & T. 637. But service is insufficient unless the original order be produced. *Parr v. Parr*, 32 L. J. M. & P. 90.

[3] The inability of the husband, respondent, to deposit in the registry or give security for a sum of money to defray the wife's costs of the hearing, is no ground for refusing an attachment against him for non-compliance with the order. *Hepworth v. Hepworth*, 31 L. J. P. & M. 18; 2 S. & T. 414. As to guardian of infant giving security, *see Beavon v. Beavon*, 31 L. J. P. & M. 166.

[4] No decree *nisi* for a divorce shall be made absolute until after six months from the pronouncing thereof, unless the court shall, under the power now vested in it, fix a shorter time. 29 & 30 Vic. c. 32, s. 3. *See Watton v. Watton*, 35 L. J. P. & M. 95. It is no ground for suspending a decree *nisi* that the respondent has given notice of an application for a new trial. *Stone v. Stone and Appleton*, 32 L. J. P. & M. 117; 9 L. T., N. S. 24. After a decree of dissolution by reason of the wife's adultery, the court will not make any order respecting settled property to deprive the husband of any benefit which he may take under the settlement. *Thompson v. Thompson and Barras*, 2 S. & T. 649; 9 Jur., N. S. 26; 32 L. J. P. & M. 30. After a decree *nisi* had been granted on the ground of the wife's adultery, the Queen's Proctor intervened, and produced evidence showing that the petitioner had, subsequently to his wife's adultery, himself been adulterously cohabiting with a woman:—*Held*, that the decree ought to be rescinded. *Lantour v. Queen's Proctor*, 10 Jur. N. S. 325; 33 L. J. P. & M. 89. See *id.* 129. The court will not order a husband to make provision for a wife, from whom he has obtained a decree of judicial separation on the ground of her cruelty. *Dart v. Dart*, 9 Jur. N. S. 474; 11 W. R. 551; 9 L. T., N. S. 23.

[5] The court has authority to regulate the custody of children up to the age of sixteen, and will give the custody to the mother, who had obtained a judicial separation on the ground of desertion. *Mallinson v. Mallinson*, L. R., 1 P. & D. 221; 35 L. J. P. & M. 84. The court will not, at the hearing of a cause, entertain an application for the custody of children, if it is founded upon evidence not admissible in the cause, for permanent alimony. *Wallace v. Wallace*, 32 L. J. P. & M. 34. If after a decree there be evidence of intention to take the child out of the jurisdiction, the court will make an immediate order for the delivery up of the child to his mother, and that she should have the custody of the child until a day named. *Portugal v. Portugal*, 35 L. J. P. & M. 103. And this may be done pending the suit. *See Cartlidge v. Cartlidge*, 2 S. & T. 567; 31 L. J. P. & M. 85. *Barnes v. Barnes*,

(U) *Suits in Formâ Pauperis.*[1]

(V) *Contempts and Attachments.*[2]

(W) *Of Compromising Suit.*[3]

(X) *Affect of Divorce as to Property, Settlement, &c. See also ante,* Alimony.[4]

MARTIAL LAW. *See* Finlayson on, and 3 L. J. N. C. 481.

MASTER and SERVANT. 5 Abr. 461; Smith on Master and Servant. *See* also Apprentice; Factories; Truck-Act.

I. Of the Hiring and Construction of Contract relating to, p. 318.

II. Determination of Contract by Death, Notice, or Dismissal for Misconduct, and Wrongful Dismissal, p. 318.

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VI. Responsibility of Master for Injury sustained by his Servant in the course of his Service, p. 319.

(A) *By Master's Negligence*, p. 319.

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VII. Liability of Servant for assisting Master in Wrongful Acts, p. 320.

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L. R., 1 P. & D. 463. Where judicial separation had been decreed at the suit of the husband, on the ground of cruelty, and afterwards the wife moved for leave of access to the children, the husband will not be ordered to pay the costs of the motion, unless he had refused reasonable access since the decree of judicial separation. *Bacon v. Bacon*, L. R. P. & D. 197. *Cooke v. Cooke*, 32 L. J. P. & M. 180.

[1] A wife suing *in formâ pauperis* for a dissolution of marriage, if she obtains a decree, is entitled to costs. *Afford v. Afford*, 30 L. J. P. & M. 174; 2 S. & T. 387. It is questionable whether the court can decree restitution when it appears that the husband has no home, and no means of maintaining his wife. *Meara v. Meara*, 14 W. R. 50.

[2] An appeal will not be heard where the appellant is in contempt, even on a question of jurisdiction. *Garstin v. Garstin*, 34 L. J. P. & M. 45. Or for a new trial. *Cavendish v. Cavendish*, 15 W. R. 182. A person threatening a petitioner to publish concerning her a statement of facts, unless her petition were withdrawn:—*Held*, guilty of contempt, and sentenced to pay a fine of 300*l*. *Chetwynd, ex parte, in re Mulock*, 10 Jur., N. S. 1188; 33 L. J. P. & M. 205. The court has power to enforce an attachment after a suit has been dismissed. *Bremner v. Bremner*, 3 S. & T. 378; 33 L. J. P. & M. 202; 10 L. T., N. S. 99. An attachment for non-payment of alimony was granted, although the order did not state to whom payment was to be made. *Ladmore v. Ladmore*, 32 L. J. P. & M. 157. As to an attachment where co-respondent misnamed, *see Churchill v. Churchill*, 37 L. J. P. & M. 61.

[3] Where a wife, in a suit for a judicial separation, had entered into a compromise by which the record was withdrawn and the terms of the separation were to be settled by an arbitrator:—*Held*, that the petitioner was not at liberty to repudiate the agreement, except on the ground of fraud, or of such an error in the terms that she ought not to be bound by them. *Hooper v. Hooper*, 3 S. & T. 251. *See Rowley v. Rowley*, 3 S. & T. 338; 10 Jur. N. S. 253; 33 L. J. P. & M. 54; 9 L. T. N. S. 846. *Hope v. Hope*, 8 De G. Mac. and G. 731.

[4] The 20 and 21 Vic. cap. 85, sec. 45, 22 and 23 Vic. cap. 61, sec. 5. These sections enable the court to deal with the settled property of an adulterous

I. Of the Hiring and Construction of Contract relating to.[1]

II. Determination of Contract by Death, Notice, or Dismissal for Misconduct, and Wrongful Dismissal.[2]

III. Right of Master to sue for Injury to Servant.[3]

IV. Action for Wages.[4]

V. Responsibility of Master for Negligent Acts of Servant, and Contracts made by him.[5]

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wife. *See March v. March and Palumbo*, 36 L. J. P. & M. 28. *Id.* 68. The husband is entitled to a portion of her income. The Divorce Court has no jurisdiction under s. 5 to make orders with reference to the application of settled property, where there is no child of the marriage living, although there may formerly have been a child of the marriage. *See Thomas v. Thomas*, 2 S. & T. 89. *Bird v. Bird*, L. R. P. & D. 231; 35 L. J. P. & M. 102. *Davies v. Davies*, 37 L. J. P. & M. 17. *Corrance v. Corrance*, *id.* 44.

[1] A workman entered into an agreement with a company to serve them, in consideration of wages to be paid to him fortnightly; and the company agreed that he should not be discharged without twenty-eight days' notice in writing, unless in case of misconduct. This necessarily implied an obligation on the part of the master to find work for the servant, and to pay him wages every fortnight. *Whittle v. Frankland*, 2 B. & S. 49. The plaintiff agreed on a Sunday to serve the defendant for a year, the service to commence on the Monday. On the Monday, the plaintiff, with the knowledge and consent of the defendant, commenced the service, and received 20*l.* on account:—*Held*, that this was a contract for a year's service to commence on a future day, but that the jury might infer a new implied contract on the Monday for a year's service from that day. *Cawthorne v. Cordrey*, 32 L. J., C. P., 152, A covenant by a joint-stock company, that in case the company should at any time thereafter "displace" A. from his appointment as agent of the said company, they would forthwith repay to plaintiff a sum of money:—*Held*, to have been broken by the company transferring their business to another company, and thereby indirectly displacing A., and that plaintiff had a good cause of action. *Stirling v. Maitland*, 34 L. J., Q. B., 1; 13 W. R. 76; 11 L. T. N. S., 337. A hiring at "two guineas a-week for one year" is a hiring by the week and not by the year. *Robertson v. Jenner*, 15 L. T., N. S., 514.

[2] A contract of service is put an end to by the death of the master, unless the contrary is stipulated. *Farrow v. Wilson*, 38 L. J. C. P. 6. When the hiring is expressly for a term certain, a custom of the trade for a master or a servant to determine it at any time without notice is inadmissible. *Peters v. Staveley*, 15 L. T., N. S., 275. But when a clerk is hired at a certain sum per annum simply, the hiring is a hiring for a year, and in absence of a custom to the contrary, he cannot be discharged before the end of the year, *Foxall v. International Land Credit Company*, 16 L. T., N. S. 637. The custom must be general, of reasonable antiquity, uniform, and sufficiently notorious that people would make their contracts on the supposition that it exists. *Id.* The damages for wrongful dismissal before expiration of term of hiring are unliquidated, and he is not entitled to the salary for the full time, but according to the probabilities of the plaintiff having other employment during such period. *Hartland v. The General Exchange Bank*, 14 L. T., N. S., 863. A huntsman is a menial servant, and therefore the hiring, though in terms for a year, and upon conditions which can only be fully carried out by a service enduring for the full period of a year, is subject to the ordinary condition that it may be determined by either party at a month's notice. *Nicoll v. Greaves*, 17 C. B., N. S., 27; 33 L. J., C. P., 259; 10 L. T., N. S., 531.

[3] A master cannot sue a railway company for injuring his servant, unless he be a party to the contract. *Allan v. Midland Railway Company*, 19 C. B., 213, 34 L. J., C. P. 292.

[4] Where services are to be paid for by a gross sum by instalments, the death of the party will not divert the right to the instalments due at the time of death. *Stubbs v. The Holywell Railway Company*, 36 L. J. Ex. 165; 2 L. R. Ex. 311. An action for work and labour will lie if a servant is engaged for a fixed period, and the master, without dismissing him, refuses to supply him with work. *Cook v. Sherwood*, 11 W. R. 595. And it seems may receive the accruing quarter's wages, where a servant, hired for a certain time, is dismissed or refused work before the expiration of that time, and files a plaint alleging the breach of contract, and claiming damages. *Barnsley v. Taylor*, 37 L. J., Q. B. 38.

[5] A passer-by who is casually appealed to by a workman for information respecting a thing which the latter is doing in a public thoroughfare, is not to be considered a volunteer assistant, so as to exonerate the workman's master from responsibility for an injury resulting to the former from the workman's negligent mode of doing the work. *Cleveland v. Spier*, 16 C. B., N. S., 399. The defendant, a builder, contracted in writing with local commissioners to make a sewer. He verbally underlet to N. the ex-

VI. Responsibility of Master for Injury sustained in the Course of his Service.

(A) *By Negligence of Master.*[1]

(B) *By Negligence of Fellow-Servant.*[2]

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cavation and brickwork at a fixed price per yard, including fencing, watching, and lighting, the defendant supplying the bricks in his own carts and removing the surplus clay from the cutting. N. employed men under him by the day. The defendant's name, as contractor, was over the door of an office near the works, but the commissioners employed the clerk of the works. Owing to the insufficient lighting, the plaintiff fell into an unfenced part of the excavated trench, and was injured:—*Held*, that the defendant was liable. *Blake v. Thirst*, 32 L. J., Exch., 189; 8 L. T., N. S., 251. The defendant sent some bales of cotton to a warehouse, and they were piled there by his men, under the direction of the warehouseman's foreman. Owing to a fault in the piling, the pile fell and hurt the plaintiff:—*Held*, that the defendant was not liable. *Murphy v. Caralli*, 10 Jur., N. S., 1207; 34 L. J., Exch., 14. *Passage v. Defries*, 7 B. & S. 157. *Innocent v. Peto*, 4 F. & F. 8. *Ogden v. Rummens*, 3 F. & F. 751. In an action against wharfingers for an injury caused by negligence in the course of discharging a cargo; the fact that they were paid by the merchant for the discharge:—*Held*, no evidence that the men actually engaged in the work were in their employ. *Woodward v. Peto*, 3 F. & F. 389. A driver of an omnibus while driving his master's omnibus, on one of its trips from A. to B., in regular course, at a point in the road wilfully and on purpose, and contrary to the express orders of his masters, wrongfully and illegally endeavoured to hinder and obstruct the passage along the road of another omnibus belonging to a rival proprietor, by drawing his omnibus across the road:—*Held*, such an act as the master was not responsible for. *General Omnibus Company v. Limpus*, 1 H. & C. 526; 9 Jur., N. S. 333; 32 L. J., Exch., 34; 7 L. T., N. S., 641,—Exch. Cham. A quarrel having arisen on the premises of a railway company between a servant of the company and a number of persons, amongst whom was A.; the company's servant gave A. into custody on a charge of assaulting him and obstructing him in the discharge of his duty. In an action by A. against the company for assault and false imprisonment:—*Held*, that the company could not be made responsible for this act of their servant. *Lumsden v. London and South Western Railway Company*, 16 L. T. N. S. 609. If a servant of a horse-dealer warrants his employer's horse on sale without authority, his master is bound thereby. *Howard v. Sheward*, 12 Jur., N. S. 1015; 36 L. J. C. P. 42; 3 L. R. C. P. 148. As to the presumed authority of a servant to make an admission touching a by-gone transaction, which would be evidence against his employers—the evidence not admitted. *Great Western Railway Company v. Willis*, C. P., 34 L. J. N. S. 195.

[1] The rule of law that an employer is not answerable for injury to a servant caused by the negligence of another servant in a common employment, does not exempt the employer from liability where the negligence was his own, while working at a common employment, and his partner in the works will be equally liable. *Ashworth v. Stanwix*, 3 Ell. & Ell. 701. In an action against a railway company by one of their labourers for damage by collision, when being carried home from the place of employment, it was attempted to distinguish this case from the ordinary cases of common employment by the fact that the accident arose from there having been no pointsman at a certain siding, and that the guard directed the points to be opened when he ought not. The distinction was negatived. *Tunney v. the Midland Railway Company*, 1 L. R. C. P. 291. *Davies v. England*, Q.B., 33 L. J. N. S. 321; 10 Jur. 1235. In an action for negligence by a workman against his employers for an injury by the falling of a scaffold pole, proved to have fallen in consequence of the rottenness of the end in the earth, it was held that there was evidence of negligence if the jury considered that the pole had been in the earth an unreasonable time without having been examined. *Webb v. Rennie*, 4 Fost. & Fin. N. P. Cas. 608.

[2] To render a master liable for an injury to one in his employ, through the negligence of another person also in his employ, it must be shown that the latter was placed by the master in such a position of trust and authority as to be fairly considered as his representative in the establishment. *Murphy v. Smith*, 19 C. B. N. S. 361; 12 L. T. N. S. 605. *Bottomley v. Brooks*, 15 L. T. N. S. 19. The rule as to a master's exemption from liability on account of injury happening to a servant by the negligence of another servant in the common employment, does not apply as between the servants of two distinct railway companies, one of which has running powers over the other's line. *Warburton v. The Great Western Railway Company*, L. R., 2 Ex. 30; 36 L. J. 9. The plaintiff was employed to do ballasting for a railway company, and a fellow-servant was employed to lay tram-plates for them, and whilst they were so employed, the plaintiff, through the negligence of the fellow-servant, was injured:—*Held*, that they were engaged in a common employment, and that the company was not liable. *Lovegrove v. London, Brighton, and South Coast Railway Company*, 16 C. B. N. S. 669; 10 Jur. N. S. 879; 33 L. J. C.

VII. Liability of Servant for assisting Master in Wrongful Acts.[1]

VIII. Jurisdiction of Justices,[2] and Criminal Proceedings connected with Master and Servant, and Operation of Truck Act.[3] *See* Embezzlement.

P. 329; 10 L. T. N. S. 718. *See Hutchinson v. York, Newcastle, and Berwick Railway Company*, 5 Ex. 343; 14 Jur. 837; 32 L. J. Ex. 205. *Morgan v. Vale of Neath Railway Company*, 10 Jur. N. S. 1074; 33 L. J. Q. B. 260; 5 B. & S. 149; 35 L. J. & B. 23. *Feltham v. England*, 36 L. J. Q. B. 14. *Waller v. South Eastern Railway Company*, 9 Jur. N. S. 501; 32 L. J. Ex. 205; 11 W. R. 731; 8 L. T. N. S. 325. A labourer in a mine was injured by the falling of a stone from the roof of a passage, the dangerous state of which was pointed out by the plaintiff to the overlooker, who neglected to secure it; the owners of the mine were not shown to have personal knowledge of the danger:—*Held*, the owners were not liable. *Hall v. Johnson*, Exch. 13 W. R. 411.

[1] If a servant combines with another to tell knowingly a positive untruth to the prejudice of his master, an action would lie; and if he combines with his master to do the same thing to the prejudice of a third person, he would also be liable. *Cullen v. Thomson*, 4 Mac. H. L. Cas. 441; 9 Jur. N. S. 85. If a keeper of a house of public resort instructs his servant to manage his house in his absence in such a manner as to amount to a misdemeanour, under 2 & 3 Vic. c. 47, s. 44, and the servant carries out such instructions, both are guilty, the master as principal, and the servant as aiding and abetting; and the latter may be convicted under 11 & 12 Vic. c. 47, s. 44. *Wilson v. Stewart*, 9 Jur. N. S. 1130; 8 L. T. N. S. 277.

[2] By 30 & 31 Vic. c. 105, councils of conciliation to adjust differences between masters and workmen may be established. The 30 & 31 Vic. c. 141, amends the statute law relative to the determination of questions arising between master and servant under contracts of service. *See Crane v. Powell*, 38 L. J. C. P. M. C. 43.

[3] A combination by a number of workmen in the employ of a trader not to continue in such employ unless the employer discharge certain obnoxious workmen, is illegal; and the imparting of such resolution to the employer is a "threat" within the 6 Geo. 4, c. 129, s. 8, and subjects the parties to conviction under this statute. *Walsby v. Anley*, 3 Ell. & Ell. 516. The workmen of S. had all struck, with the exception of one man of the name of James. The men, however, agreed to resume work, but upon returning and finding J. still at work they gave over work, and retired; and in answer to a question of the master why they did so, a deputation from a trade's union, headed by the appellant, attended, who said, "We've come about James; we shall not allow J. to work;" whereupon the master said, "It is a very hard case; J. was the only man who stayed to help me with the special orders in hand;" whereupon the appellant said, "Well, it's of no use, we have made up our minds. He shall not work; he's a scoundrel. Unless you discharge him your men shall not be allowed to work:"—*Held*, that the appellant brought himself within the meaning of the 6 Geo. 4, c. 129, s. 3. *Shelbourne v. Oliver*, 13 L. T. N. S. 630. *See O'Neill v. Longman*, 32 L. J. M. C. 259; 12 W. R. 47; 8 L. T. N. S. 657—Q. B. *Skinner v. Kitch*, 36 L. J. M. C. 116. *Wood v. Bowron*, Q. B., 32; M. C. 2 L. R. 21. *Id.* 5. A person who was hired to keep the accounts on a farm, to weigh out food for cattle, and set the men to work, and "to lend a hand to anything if wanted," is not a servant in husbandry. *Davies v. Lord Berwick*, 3 Ell. & Ell. 549. A servant having been convicted, under 4 Geo. 4, c. 34, s. 3, for absenting himself without leave or lawful excuse from his service, and imprisoned, and still refusing to return after his imprisonment to the service, the term of which is incomplete, may be again convicted. *Unwin v. Clarke*, 1 L. R. Q. B. 417; 35 L. J. M. C. 193; 14 L. T. N. S. 356. An iron-shipbuilder contracted in writing with six skilled handicraftsmen to plate a vessel, they agreeing exclusively to serve him subject to the rules and regulations of the yard, (they employing and paying such skilled and unskilled assistants as might be requisite to complete the vessel with all dispatch), and to be paid 5*l.* per ton for the work so done by them:—*Held*, that the contracting parties were "handicraftsmen or artificers," within s. 3 of the 4 Geo. 4, c. 34. *Lawrence v. Todd*, 14 C. B. N. S. 554; 32 L. J. M. C. 238; 8 L. T. N. S. 505. A master summoned by an artificer, under s. 1 of 20 Geo. 2, c. 19, for wages, is entitled to a deduction in respect of bad workmanship; and the justices should order the payment of so much "as shall seem just and reasonable." *Sharp v. Hainsworth*, 3 B. & S. 139; 9 Jur. N. S. 353; 7 L. T. N. S. 320—Q. B. Where a business is conducted so as to be a public nuisance, the owner is liable to be indicted, although the nuisance is entirely occasioned by the conduct of his servants. *Reg. v. Stephens*, 1 L. R. Q. B. 702; 35 L. J. M. C. 251; 14 L. T. N. S. 593. Servants appropriating masters' corn for feeding horses.—By 26 & 27 Vic. c. 103, servants taking their masters' corn, pulse, roots, or other food contrary to his orders, for the purpose of giving the same to their masters' horses or other animal, shall not by reason thereof be deemed guilty of felony, but shall be liable to imprisonment, or to pay a pecuniary penalty. Under the Truck Act, provided the contract for stoppages, &c., is in writing,

MEDICAL PRACTITIONERS. 5 Abr. 483. *See* 21 & 22 Vic. c. 90. 25 & 26 Vic. c. 91, s. 1, incorporates the General Council of Medical Education and Registration of the United Kingdom. By sect. 2, the right of printing, publishing, and selling the British Pharmacopœia is vested in such council. And by sect. 3, notice is to be given in the Gazette when the Pharmacopœia is published. 31 & 32 Vic. c. 121; 32 & 33 id. c. 117.

I. Retrospective Effect of 21 & 22 Vic. c. 90.[1]
II. College of Physicians.[2]
III. Medical Council.[3]
IV. Recovery of Charges and Fees.[4]
V. Falsely Adopting Description of Doctor.[5]
VI. Liability for Mala Praxis and Negligence.[6]

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and signed by the artificer, the amount to be deducted in respect of each head of deduction need not be specified in the written contract. *Cutts v. Ward*, 2 L. R. Q. B. 357; 36 L.J.Q.B. 161; 15 L.T.N.S. 614.

[1] The act is not retrospective, and does not apply to services rendered before the 1st January, 1861. *Wright v. Greenroyd*, 31 L. J. Q. B. 4; 1 B. H. 758, or an action brought before, but tried after the 1st January 1861. *Thistleton v. Frewer*, 31 L. J. Ex. 230.

[2] Query, whether the Medical Act 1858, has taken away the powers of the College to relax its bye-laws as to supplying medicines to patients? *Attorney-General v. College of Physicians*, 30 L. J. C. 757.

[3] 21 & 22 Vic. c. 90. By sect. 4 the council is to consist of one person chosen from time to time by each of several bodies, including the University of London:—*Held*, that the right to elect its member is vested in its senate, consisting of the chancellor, vice-chancellor, and fellows for the time being; not in the whole body incorporated as the University. *Reg. v. Storrar*, 2 El. & El. 133. The medical council is the sole judge of whether a registered medical practitioner has been guilty of infamous conduct in a professional respect, and the court has no power to interfere. *Lamert, Ex parte*, 4 B. & S. 582; 33 L. J. Q. B. 69; 9 L. T. N. S. 410—Q. B. *Reg. v. General Council of Medical Education*, 3 El. & El. 525.

[4] A physician, if registered under 21 & 22 Vic. c. 90, can recover reasonable charges for professional visits, without a special agreement, provided he is not prohibited from suing by any bye-law of his college. *Gibbon v. Budd*, 2 H. & C. 92; 9 Jur., N. S. 525; 32 L. J. Exch. 182; 8 L. T. N. S. 321. A medical practitioner is entitled to maintain an action for attendances and medicines; though not registered at the time of such attendance under 21 & 22 Vic. c. 98, it is enough if he appears to be duly registered at the time of the trial. *Turner v. Reynall*, 14 C. B. N. S. 328; 9 Jur. N. S. 1077; 32 L. J. C. P. 164; 11 W. R. 700; 8 L. T. N. S. 281. Where a business is carried on by two partners, one of whom is registered as a surgeon and an apothecary, and the other as a surgeon only; this is no answer to a joint claim for attendances and medicines supplied in both capacities. *Id. Semble*, that it would be enough if one member of the firm only had been registered. *Id.* The statute is not confined to cases in which the patient is sued. *Alvasey De la Rosa v. Prieto*, 16 C. B. N. S. 578; 10 Jur. N. S. 851; 33 L. J. C. P. 262; 12 W. R. 1029; 10 L. T. N. S. 757. Hence an unregistered assistant may sue a registered practitioner for salary, but an unregistered practitioner cannot sue a registered practitioner for medicines supplied to, or attendance upon the patients of the latter at his request. *Id.* Where medicine or attendance is supplied by an unregistered practitioner to a patient, under a guarantee for payment, the statute will afford a defence either to the principal debtor, or to the surety. *Id.*

[5] The wilful and false assumption of the title Doctor of Medicine, by a person duly registered as a surgeon, is an offence within the Medical Act. *Ellis v. Kelly*, 30 L. J. R. N. S. M. C. 35; 6 H. & N. 222.

[6] A person not qualified as being a regular medical practitioner, but assuming to be or to practise as such, and undertaking to treat another for a disease, is liable for injury caused by ignorant and improper treatment, by which the patient is rendered worse instead of better, and is injured by the use of improper medicines. *Ruddock v. Lowe*, 4 F. & F. 519. In an action against a chemist and druggist upon an alleged retainer (as a surgeon and apothecary) to treat the plaintiff for a certain disorder (for which mercurial treatment was improper), the breach being negligent treatment (by mercury):—*Held*, that if the defendant assumed to act as a surgeon or apothecary, he was liable in that character. *Jones v. Fay*, 4 F. & F. 525. *See Perionowsky v. Freeman*, 4 F. & F. 977. So is the maker of a secret article producing an ill effect upon the buyer. *George v. Skivington*, 39 L. J. Ex. 8.

MENACES and Threats. *See* Threats and Menaces.

MERGER.[1] 5 Abr. 484. *See* Lease.

MESNE Process. *See* Writ of Summonses.

MESNE Profits. *See* Ejectment, and *Pearce v. Coaker*, 38 L. J. Ex. 82.

MERCHANT Service Acts. *See* Ship and Shipping.

METAL Dealers. *See* 24 & 25 Vic. c. 110.

METROPOLITAN Law. Metropolitan Building Act, 18 & 19 Vic. c. 122; am. 23 & 24 Vic. c. 52; 24 & 25 Vic. c. 87; am. 32 & 33 Vic. c. 82. Metropolitan Hackney-carriage Acts, 6 & 7 Vic. c. 86; am. 13 & 14 Vic. c. 7; 16 & 17 Vic. c. 33; am. 32 & 33 Vic. c. 115. Metropolitan Local Management Acts, 18 & 19 Vic. c. 120; 19 & 20 Vic. c. 112; 21 & 22 Vic. c. 104; 25 & 26 Vic. c. 102. Metropolitan Police, 10 Geo. 4, c. 44; 3 Wm. 4, c. 10; 2 & 3 Vic. c. 47; am. 30 & 31 Vic. c. 39. Metropolitan Police District, power of justices, 3 & 4 Vic. c. 84; 32 & 33 Vic. 115. Metropolitan Poor (asylum), 30 & 31 Vic. c. 6; am. 32 & 33 Vic. c. 63. Metropolitan Street Traffic, 30 & 31 Vic. c. 134; am. 31 & 32 Vic. c. 5. Metropolitan Turnpikes, 26 & 27 Vic. c. 78. Metropolitan Main Drainage, 21 & 22 Vic. c. 104; 21 & 22 id. c. 601. Regulating Street Music, 27 & 28 Vic. c. 55. Metropolitan Grounds and Gardens, 26 id. c. 15. Metropolitan Embankment of Thames, 26 & 27 id. c. 75.

I. Board of Works, Rights, Duties, and Liabilities.

II. Rates and Contributions.

III. Streets, Inclosed Spaces, and Squares.

IV. Drains, Sewers, &c.

V. District Board and Vestries.

VI. Building Act.

(A) *Building within and Construction of, and Parties connected.*

(B) *Party Walls.* *See* Party Walls.

(C) *Dangerous Structures.*

VII. Obstruction of Voters at Elections.

I. Board of Works, Rights, Duties, and Liabilities.[2]

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[1] A mortgage-security executed by two (and the wife of the third) of three persons indebted to the mortgagee in a simple contract debt, does not operate as a merger of the claim on the simple contract in the specialty. *Sharpe v. Gibbs*, 16 C. B. N. S. 527. Where an estate descends, subject to possible debts, on a person entitled to share in a portion fund charged upon it, there is a presumption against merger, because that would give priority to the persons entitled to the other portions, and to the debts. *Sing v. Leslie*, 2 H. & M. 68. To operate a merger of a simple contract debt in a specialty, the specialty must be co-extensive with the simple contract debt, and between the same parties. *Boaler v. Mayor*, 19 C. B. N. S. 76; 34 L. J. C. P. 230; 12 L. T. N. S. 457.

[2] The 148th section of 18 & 19 Vic. c. 120, transfers from the Metropolitan Commissioners of Sewers to the Metropolitan Board of Works all liabilities of the Commissioners of Sewers, whether such liabilities were for ascertained sums or unliquidated damages. *In re Pettiward*, 19 C. B. N. S. 489; 16 *id.* 546; 33 L. J. C. P. 233. The Board has no power under section 135 of 18 & 19 Vic. c. 120, to erect any works on the bed or soil of the Thames. *Brownlow v. Metropolitan Board of Works*, 13 C. B. N. S. 768. They may do so under sect. 2 of 21 & 22 Vic. c. 104, provided they obtain the consent of the

II. Rates and Contributions.[1]

III. Streets, Inclosed Spaces, and Squares.[2]

IV. Drains, Sewers, &c.[3]

Admiralty. *Id.* If the Board, in the exercise of the statutory powers, does an act without exercising due care and skill, which causes injury, they will be liable to an action, although compensation is given, by proceeding before justices, by sects. 135 & 225 of the 18 & 19 Vic. c. 120. *Clothier v. Webster*, 9 Jur. N. S. 231—C. P. A proceeding for settling by arbitration the amount of compensation payable by the Metropolitan Board in respect of land damaged by the sewage works, is not a proceeding against the board within the meaning of sect. 106 of the 25 & 26 Vic. c. 102, which limits the time for instituting any proceeding against such board. *Delany v. The Metropolitan Board of Works*, 36 L. J. C. P. 227. The proceedings, which cannot be taken against the board until one month after notice, and cannot be commenced after the expiration of six months after the injury, are proceedings of a hostile character, not proceedings for obtaining compensation for alleged damage by works which the board were authorised to make. *Delany v. Metropolitan Board of Works*, 3 L. R. C. P. 111; 37 L. J. 59. The defendant contracted with the board to make a new sewer to the satisfaction of the engineer of such board, and in the course of carrying out such contract the defendant made a dam across the old sewer, and unintentionally neglected sufficiently to pump out the sewage, so that it entered the plaintiff's house and injured it:—*Held*, that the defendant was entitled to notice of action. *Poulsum v. Thirst*, 2 L. R. C. P. 449; 36 L. J. 225. The right of prosecution given to the Home Secretary by 21 & 22 Vic. c. 104, s. 31, does not supersede the right of private persons to an injunction. *Atty.-Gen. v. Metropolitan Board of Works*, 1 H. & M. 298.

[1] By 18 & 19 Vic. c. 120, s. 181, the Board of Works has power, in default of the overseers, to appoint a person to make a rate over parishes beyond the metropolis, but within the limits of the repealed Metropolitan Sewers Act, 11 & 12 Vic. c. 112. *R. v. Glossop*, 32 L. J. M. C. 91. When an order of the Board has been made under 18 & 19 Vic. c. 120, s. 140, for contribution towards the expenses, if the order is good on the face of it, the only mode of appeal open to the district is by contesting the propriety of the assessment at the audit. *Reg. v. Strand District (Board of Works)*, 4 B. & S. 526; 33 L. J. M. C. 33; 4 B. & S. 551; 33 L. J. Q. B. 299; 11 L. T. N. S. 183. As to rates for special purposes, *R. v. Ingham*, 41 L. J. 205; 32 L. J. M. C. 214. *R. v. Stretford*, *id.* 230. In assessing property to the sewer-rate under 18 & 19 Vic. c. 120, the old law of sewers must in general prevail. *Reg. v. Head and Metropolitan Board of Works*, 3 B. & S. 419; 32 L. J. M. C. 115. In thea bsence of any estimate or basis of a county rate in the city of London, under 21 & 22 Vic. c. 104, s. 10, may make the parochial assessment the basis or estimate of a rate for raising the necessary sums for the purposes of the main drainage rate. *London Commissioners of Sewers v. Metropolitan Local Board*, 16 L. T. N. S. 351.

[2] The provision as to the width of streets only applies to streets on which the houses *front. Met. Bd. of Wks. v. Cox*. 19 C.B.N.S. 445. A tramway is not a pavement of a street, and consequently not within the powers conferred on vestries by 18 & 19 Vic. c. 120, s. 98. *Reg. v. Train*, 2 B. & S. 640. It is no offence, under sect. 54 of 2 & 3 Vic. c. 47, to turn cattle into a thoroughfare, provided they are under the care and control of some person attending them for the purpose, and manual restraint is unnecessary. *Sherborn v. Wells*, 32 L. J. M. C. 179. Under 25 & 26 Vic. c. 102, s. 75, a small conservatory consisting of an iron frame (glazed) projecting beyond the wall of the house, but not beyond the shop-front, is not an erection within the statute, and that it was not beyond the general line of buildings in the street. *St. George (Vestry) v. Sparrow*, 16 C. B. N. S. 209; 33 L. J. M. C. 118; 10 L. T. N. S. 504. The certificate of the superintending architect as to the general line of buildings is not final or conclusive. *Id. Bauman v. Vestry of St. Pancras*, see L. R. Q. B. 528. Section 98, 25 & 26 Vic. c. 102, does not require the road to be widened to the full width of 40 feet from the opposite fence of such road, but only to the width of 20 feet from the centre of the roadway to the boundary wall dividing the private ground from the public way. *Taylor v. The Metropolitan Board of Works*, 36 L. J. M. C. 53. As to lighting Vauxhall bridge. See *Reg. v. Lambeth (Vestry)*, 3 B. & S. 1; 9 Jur. N.S. 48. As to repairs by majorities and the erection of urinals, *see* 8 L. T. 44, 558. The owner of pleasure-grounds abutting upon a new street, is liable under the 77 s. 25 & 26 Vic. c. 102, to contribute to the expense of paving main streets. *Holland v. Kensington Vestry*, 36 L. J. M. C. 105. To bring an inclosed garden or square in a city or borough within the 26 Vic., so as to give the Metropolitan Board, or the trustees or commissioners elsewhere than in London, jurisdiction over it, it must have been irrevocably set apart for the use and enjoyment of the adjoining inhabitants. *Tulk v. Metropolitan Board of Works*, 3 L. R. Q. B. 94; 37 L. J. 11; 17 L. T. 202.

[3] The Metropolitan Board is not authorised, by sect. 135 of the 18 & 19 Vic. c. 120 to

V. District Board and Vestries.[1]

VI. Building Act.

(A) *Buildings within and Construction of, and Parties connected with.*[2]

(B) *Party Walls.* *See* Party Walls.

(C) *Dangerous Structures.*[3]

VII. Obstruction of Voters at Elections.[4]

MILITIA. 5 Abr. 286. Military College, 25 & 26 Vic. c. 33. Militia Acts, 13 & 14 Vic. cc. 46, 49; 15 Vic. c. 50; 17 Vic. cc. 13, 105; 18 Vic. cc. 100, 106; am. 22 & 23 Vic. c. 38; (pay, &c.) *id.* c. 54; am. 23 & 24 Vic c. 94; (ballot) c. 120; (pay, clothing, &c.) c. 133; 24 & 25 Vic. c. 119; 25 & 26 Vic. c. 80; (ballot) c. 120; (Susp. of B.) 25 & 26 Vic. c. 77; 26 & 27 Vic. c. 53; 32 & 33 Vic. cc. 13, 66.

MILL. *See* Custom, 3 Abr. 538.

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turn into a navigable river or stream the sewerage of an entire district (which has not previously been drained into such river or stream), so as to create a nuisance. *Atty.-Gen. v. Metropolitan Board of Works*, 9 L. T. N. S. 139. A contractor employed by the Board, under their compulsory powers, to open a public road for constructing a sewer, is not liable, after filling in the trench and making that part of the road as sound and compact as it can then be made, for injury in consequence of the natural subsidence of the soil which he has put in. *Hyams v. Webster*, 36 L. J. Q. B. 166. As to making sewers, see *Reg. v. Metropolitan Board of Works*, 9 Jur. N. S. 1008; 32 L. J. Q. B. 105. *Pettiwood v. Metropolitan Board*, 34 L. J. C. B. 301. *Pew v. Metropolitan Board*, *id.* 97, 6 B. & S. 235.

[1] The effect of 48 & 49 Vic. c. 120, as to consolidating parishes into districts, is not only a substitution of districts for parishes for purposes of management, but also for purposes of expenditure and taxation; and the rate to be levied under an order of the board is a general rate on the entire district, without reference to the outlay in any particular parish. *Overseers of St. Botolph v. Whitechapel Board of Works*, El. & El. 89. Where a tenant has been served with notice by the vestry or district board not to pay his rent to his landlord, but to pay it to the vestry clerk towards expenses of paving, &c., but the tenant has not paid his rent pursuant to such notice, when his landlord distrains:—*Held*, the distress is not wrongful, as the act only contemplates actual payments to be deducted from the rent. *Ryan v. Thompson*, 3 L. R. C. P. 144; 17 L. T. 506; 37 L. J. 134.

[2] The power given by sect. 76 of the 18 & 19 Vic. c. 120, by which a district board is authorised to demolish a house, on neglect of the builder to give seven days' notice of his intention to build, does not empower the board to demolish the house without first giving the person guilty of the omission an opportunity of being heard. *Cooper v. Board of Works for Wandsworth District*, 14 C. B. N. S. 180; 9 Jur. N. S. 1155; 32 L. J. C. P. 185; 11 W. R. 446. The right to sue is not taken away by sect. 24, giving a right of appeal to the Metropolitan Board of Works. *Id.* The rules of construction contained in the first schedule of the 18 & 19 Vic. c. 122, have no reference to public buildings. *Reg. v. Carruthers*, 10 Jur. N. S. 767; 33 L. J. M. C. 107; 12 W. R. 372; 9 L. T. N. S. 825, Q. B. The act 18 & 19 Vic. c. 122, does not enable the building owner to rebuild a party structure so as to obstruct the ancient lights of the adjoining owner. *Crofts v. Haldane*, 3 L. J. Q. B. 85. A building beyond the general line of buildings without consent of Board of Works, may be demolished by magistrate's order. *Wandsworth Board of Works v. Hull*, 3 L. J. N. 271. An occupier of premises, who has paid expenses under the 18 & 19 Vic. c. 122, may deduct the amount from the rent payable by him to any owner of the premises; but he is not thereby precluded from recovering his claim by action. *Earle v. Maughan*, 14 C. B. N. S. 626; 10 Jur. N. S. 208. The section 108, to a month's notice of action, does not apply to an act of a building owner by which damage occurred to the adjoining owner. The words "or other person" mean *ejusdem generis* with a district surveyor, or statutory duty under which the act is done. *Williams v. Golding*, L. R. C. P. 69; 35 L. J. 1. It does not necessarily follow that the removal of an adjoining house is an interference with the party structure, so as to entitle the adjoining owner to the three months' notice under sections 83 & 84. *Major v. Park-lane Company*, 2 L. R. Eq. 453.

[3] As to paying expenses incurred by Commissioners in taking down, &c. *see* 30 L. J. M. C. 95; 1 E. & E. 533.

[4] An intentional obstructing of the voting by actual violence is an offence within the 18 & 19 Vic. c. 120, s. 20. *Buckmaster v. Reynolds*, 13 C. B. N. S. 63.

MINES and Minerals. 5 Abr. 486. Inspection and Regulation of. *See* 13 & 14 Vic. c. 100; 23 & 24 *id.* c. 151.

I. As to Nature and Incident of Property in.[1]

II. Mining Companies.[2]

III. Inspection of.[3]

IV. Injuries to by Working, and Obligations and Liabilities of Adjoining Owners.[4]

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[1] A custom for the owner of mines to work the mines so as to let down the surface whenever necessary, the surface being owned by another person, would be repugnant and void. *Hilton v. Granville*, 5 Q. B. 701. *Wakefield v. Duke of Buccleuch*, 4 L. R. 4 Eq. 613; 36 L. J. 763. An act of Geo. 3, for enclosing the moors and commons within the manor of L. contained a saving of all the seignorial rights of the Bishop of D., as lord of the manor, and also free liberty of winning and working mines belonging to the see and bishopric of D., wheresoever the same should be, and of carrying away the coals gotten thereout, or out of any other lands whatsoever:—*Held*, that the bishop had no right to carry over the enclosed lands coal gotten from mines within the manor, but not belonging to the see. *Hedley v. Fenwick*, 3 H. & C. 349—Exch. Cham. *The Stourbridge Navigation v. The Earl of Dudley*, 3 E. & E. 409.

[2] There is no distinction between a mining company conducted on the cost-book principle and an ordinary partnership, as to the right of a creditor to appropriate a payment, and this right is unaffected by a change of partners. *Geake v. Jackson*, 36 L. J. 108, C. P. See *Lanyon v. Smith*, 9 Jur. N. S. 1228; 32 L. J. Q. B. 212; 8 L. T. N. S. 312. A company registered in the Stannaries Court for the working of mines in Cornwall must be wound up in the court of the Vicewarden of the Stannaries. *East Botallack Mining Company, In re*, 10 Jur. N. S. 1193. *See* 18 & 19 Vic. c. 32. As to extending Stannary laws to Devon, 32 L. J. Ch. 92; and 32 & 33 Vic. c. 19.

[3] By a special rule, the 23 & 24 Vic. c. 151, the banksman is directed to take care that the persons descending the pit shall not exceed the number of eight men; a breach of these rules is punishable on summary conviction by fine and imprisonment. A., the responsible manager of the pit, was close to the pit, and was cognizant that more than eight men were being lowered down at one time, and had power to prevent the banksman from so doing, and did not interfere: —*Held*, that A. was properly convicted of a breach of the regulations, as being a person aiding, abetting, or procuring the commission of the offence. *Howell v. Wynne*, 15 C. B. N. S. 3; 32 L. J. P. M. C. 241. The agent of a colliery which is actually worked only on week-days incurs a penalty under sect. 11, by neglecting to keep an adequate ventilation in the colliery during the suspension of actual work between Saturday night and Monday morning; for that, notwithstanding such suspension, the colliery was worked during that time within the meaning of that section. *Knowles v. Dickinson*, 2 El. & El. 705.

[4] Under the Railway Clauses Act, a mine owner is entitled to compensation under ss. 77, 81. *Whitehouse v. Wolverhampton Railway Company*, 4 L. J. N. C. 250. A person entitled to the minerals under the land of another, with license to make a mine shaft opening into it, is, in the absence of any stipulation to the contrary, under a legal obligation to the owner of the surface soil to fence the shaft. *Williams v. Groucott*, 4 B. & S. 149; 32 L. J. Q. B. 237. An owner of a mine at a higher level than an adjoining mine has a right to work the whole of his mine in the usual manner for the purpose of getting out the minerals in any part of his mine; and he is not liable for any water which flows by gravitation into such adjoining mine from works so conducted. *Baird v. Williamson*, 15 C. B. N. S. 376; 33 L. J. C. P. 101. S. C. *Williamson v. Baird*, 10 Jur. N. S. 152. *Bagnall v. London and Western Railway Company*, 1 H. & C. 544; 9 Jur. 254; 9 L. T. N. S. 419, Exch. Cham. A vendor of land having sold it for the purposes of a railway, cannot afterwards work the minerals under the surface (though they have been expressly reserved to him,) in such a manner as to prejudice the use of the land for the purposes for which it has been purchased; the right to adjacent support from the vendor's land attaches upon such a sale even beyond the limits of the purchased land. *Elliot v. North Eastern Railway Company*, 10 H. L. Cas. 333. See *Rowbotham v. Wilson*, 30 L. J. Q. B. 49; 8 H. L. 348. *Primâ facie*, the owner of land is entitled to the surface itself, and all below *ex jure naturæ:* those who seek to derogate from that right must do so by virtue of some grant or conveyance. *Id.*, 8 H. L. Cas. 348. Under a grant of minerals, a power to get them is a necessary incident. *Id.* A. was owner of land, E. was owner of mines running underneath the land. He worked the mines in such a manner (without actual negligence) that the land sank in; and after more than six years' interval the sinking occasioned an injury to the houses of A.:— *Held*, that a right of action accrued to A. when this injury actually occurred, and was not barred by the Statute of Limitations. *Backhouse v. Bonomi*, 9 H. L. Cas. 503. As

MISAPPROPRIATION by Servants. 26 & 27 Vic. c. 103.

MISCHIEVOUS Animals. *See* Animals, p. 19.

MISDEMEANORS.[1] 5 Abr. 48. Bail in, 16 & 17 Vic. c. 32; Vexatious Indictments, 22 & 23 Vic. c. 17.

MISREPRESENTATION. *See* Deceit; False Pretence; Warranty.

MODUS. *See post*, Tithes.

MOLLITER, Manus imposuit. *See* Assault and Battery.

MONEY, Payment of into Court. *See post*, Payment of Money into Court.

MONEY Lent and Advanced.[2]

I. Money Paid.[3]

II. Money Received.[4]

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to covenants as to working, see *Hodyson v Moulson*, 18 C. B. N. S. 332. *Fletcher v. Rylands*, 4 H. & C. 263; 1 L. R. Exch. 265; 12 Jur. N. S. 603; 35 L. J. Exch. 154. *Birmingham Canal Navigation Company v. Dudley (Earl)*, 9 Jur. N. S. 24. When the working of mines, in however careful a manner, has occasioned the subsidence of the land of another, although not immediately adjoining, damages may be recovered in respect of injury to buildings thereon erected or enlarged within twenty years, provided their weight did not occasion or contribute to the subsidence. *Hamer v. Knowles*, 30 L. J. R. N. S. Exch. 102; 6 Hurls. & N. 154.

[1] To solicit and incite a person to commit a felony, though no felony be in fact committed, is a misdemeanor, notwithstanding the 24 & 25 Vic. c. 94, s. 2, which contemplates that a felony should have been committed. *R. v. Gregory*, 36 L. J. M. C. 60.

[2] The defendant's solicitor having received authority from the defendant to borrow 100*l.* on a mortgage to be granted by the defendant, obtained 420*l.* from the plaintiff on the security of a deed of mortgage, to which he forged the plaintiff's signature. Shortly after he lent 100*l.* to the defendant, as from himself, and took from him a mortgage of the property:—*Held*, that the plaintiff could not recover 100*l.* from the defendant as money lent. *Painter v. Abel*, 2 H. & C. 113; 33 L. J. Ex. 67; 8 L. T. N. S. 287—Exch. Where a plaintiff lent money to B. on a guarantee of H., and afterwards B., the principal debtor, and H. signed a paper, promising jointly and severally to repay the money:—*Held*, that there was evidence to charge B. and H. jointly. *Buck v. Hurst*, 1 L. R. C. P. 297; 12 Jur. N. S. 704. Money advanced solely for the purpose of obtaining security for a pre-existing debt, though the person advancing it was aware that it would be applied to an illegal purpose, is not money paid upon an illegal consideration. *Bagot v, Arnott*, 15 W. R. 812—Ir. C. P.

[3] Money paid under mistake of fact may be recovered back. *Shand v. Grant*, 15 C. B. N. S. 324; 9 L. T. 500. *Sentance v. Hawley*, 13 C. B. N. S. 458; 7 L. T. N. S. 745. But not where mistake known only to the plaintiff. *Freeman v. Jeffries*, 38 L. J. Ex. 116. An agent who has in effect paid over money to his principals, cannot afterwards be sued for it. *Holland v. Russell*, 32 L. J. Q. B. 297; 8 L. T. N. S. 468. The plaintiff under a bill of sale seized goods on the defendant's premises, and with his knowledge, but without any express request, allowed them to remain there until rent became due. The landlord having distrained them, the plaintiff paid the rent and expenses:—*Held*, that this was not a compulsory payment by the plaintiff of a debt of the defendant, for his benefit or at his implied request. *England v. Marsden*, 1 L. R. C. P. 529; 35 L. J. C. P. 259; 14 L. T. N. S. 405. See *Exhall v. Partridge*, 8 T. R. 308.

[4] To sustain an action for money had and received there must be a privity between the parties. *Watson v. Russell*, 5 B. & S. 968; 9 Jur. N. S. 249; 31 L. J. Q. B. 304; 34 *id.* 93. A broker, having an order to buy 50 bales of cotton, executed it by buying them along with 250 other bales in a single contract with one vendor:—*Held*, that money given to the broker to pay for the 50 bales, in the belief that the order had been duly executed, might be recovered back as paid on a total failure of consideration. *Bostock v. Jardine*, 3 H. & C. 700; 34 L. J. Ex. 142; 12 L. T. N. S. 577. Money not paid under duress in the strict legal sense of the term, but as a payment made involuntarily under undue pressure, may be recovered back. *Fraser v. Pendlebury*, 31 L. J. R. N. S. C. P. 1. The plaintiff offered a composition of 5*s.* in the pound, which some of the creditors assented to. The defendant refused, but ultimately was induced to sign the deed by the plaintiff giving him a bill and 50*l.* in money, in addition to the composition. Some of the creditors had refused to sign unless the defendant signed, and of this the defendant was aware:—*Held*, that the plaintiff was entitled to recover back the 50*l.* from the defendant. *Atkinson v. Denby*, Ex. Ch., 31 L. J. Ex. 362; 7 H. & N. 934.

MORMON Marriage.[1] *See* Marriage.

MORTMAIN.[2] 5 Abr. 494.

MORTGAGE. 5 Abr. 694. Mortgage debentures by companies, 28 & 29 Vic. c. 78. Mortgagees, 13 Vic. c. 60; 23 & 24 Vic. c. 145. Mortgagers, &c., by municipal corp., 23 Vic. c. 16.

I. Stamp Duty on. *See* 28 & 29 Vic. c. 96, s. 17; *Foley v. Commissioners of Inland Revenue*, 37 L. J. Ex. 109.

II. Mortgagor and Mortgagee, Rights and Liabilities.[3]

III. What may be the Subject of Mortgage.

IV. Equitable Mortgage.[4]

MORTUARY. 5 Abr. 501.

MOTION. *See post*, Rules, Motions, and Orders.

MULTIPLEPOINDING. 5 Abr. 501.

MURDER and MANSLAUGHTER. *Id.* *See* also Indictment.

I. Of Murder, Manslaughter, Justifiable Homicide, and Shooting with Intent, p. 328.

II. The Indictment and Trial, p. 328.

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[1] The matrimonial court will not (*inter se* the parties themselves) recognise a marriage duly contracted between members of a sect professing polygamous opinions. *Hyde v. Hyde*, 1 L. R. P. & D. 130; 35 L. J. 57.

[2] Conveyances of land, not exceeding two acres, for the erection thereon of a building for religious, educational, scientific, or other like purposes, exempted from the provisions of the acts 31 & 32 Vic. c. 44. A legacy to build a parsonage-house is valid. *Crewe v. Read*, 36 L. J. C. 136. *Cresswell v. Cresswell*, 6 L. R. Eq. 69; 37 L. J. 521. A deed executed under 9 Geo. 2, c. 36, is sufficient if it is made to take effect so as to give a title to immediate possession of the land. *Fisher v. Brierley*, 10 H. L. Cas. 159.

[3] B., in consideration of a sum of money lent to him by the defendants, assigned by deed certain goods of his to hold as their own proper goods; nevertheless, by way of mortgage, for securing the repayment of the loan, with full power to the mortgagees to sell the goods, and out of the proceeds to reimburse themselves the loan and costs of sale, and to pay the residue, if any, to B.:—*Held*, that the property in the goods passed to the mortgagees, and that the plaintiff, who claimed the same goods under a subsequent assignment to him from B., could not maintain an action against them for selling the goods without taking reasonable care to obtain the best prices for them. *Maughan v. Sharpe*, 34 L. J. C. P. 19. Mortgage under a power of sale: a mortgagee exercising such power may allow part of purchase-money to remain on mortgage. *Thurlow v. Mackerell*, 3 L. J. N. 268; 38 L. J. Q. B. 57. *See Metters v. Brown*, 33 L. J. C. 99. *Leigh v. Lloyd*, 34 L. J. C. 646. Mortgage of house and freehold lands in 1836; mortgagor remaining in possession. In 1847 mortgagee recovered judgment in an action of ejectment against mortgagor, and entered into possession of the land, but not of the house. In an ejectment by mortgagee to recover the house, in which the above acts were proved:—*Held*, there was no evidence of possession nor of the creation of a tenancy between him and the mortgagor to prevent the bar of the statute. *Thorp v. Facey*, C.P., 35 L. J. 349. In taking the accounts between mortgagor and mortgagee, whether in a foreclosure or in a redemption suit, the mortgagor is entitled to the benefit of set-off. *In re Agra and Masterman's Bank (Lim.) ex parte Anderson*, 36 L. J. C. 73. As to mortgagee distraining, *see Distress*, and *Morton v. Woods*, 37 L. J. Q. B. 242. To an action of detinue for title deeds by the trustees of P. M.'s settlement, P. M. having died, defendants, the executrixes of J. N., pleaded an equitable mortgage by P. M. to J. N. by deposit with memorandum, and that the loan had not been repaid; plaintiffs swore that they were entirely ignorant of the memorandum:—*Held*, that they were entitled to inspection of the memorandum. *Owen v. Nickson*, 3 Ell. & Ell. 602.

[4] Where title-deeds are deposited by way of equitable mortgage, a memorandum merely stating the purpose for which they are deposited is not an agreement for a mortgage, and need not be stamped. *Meek v. Bayliss*, 31 L. J. Chanc. 448.

I. Of Murder, Manslaughter, Justifiable Homicide, and Shooting with Intent.[1]

II. The Indictment and Trial.[2]

MUTE, Prisoner Standing. 7 & 8 Geo. 4, c. 28.

MUTINY Act. *See* 32 & 33 Vic. cc. 4, 5.

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[1] A man is not criminally responsible for the death of another party caused by his negligence, where he would not have been civilly liable in an action at the suit of the party injured, if the injuries sustained had fallen short of causing his death. *Reg. v. Birchall*, 4 F. & F. 1087. When two or more, one of whom has received the provocation of a blow, are charged with murder, and one of them has received a provocation (as a blow) which would reduce homicide to manslaughter, and it cannot be proved which of them inflicted the fatal blow, neither of them can be convicted of murder, without a proof of a common design to inflict the homicidal act; nor of manslaughter, without proof of a common design to inflict unlawful violence. *Reg. v. Turner*, 4 F. & F. 339. *Reg. v. Luck*, 3 F. & F. 483. On the trial of an indictment for murder, it was proved that the deceased rushed at the prisoner, her husband, with whom she had been quarrelling, took his hat off, and caught him round the neck; and she then received a mortal wound, inflicted by him with a knife which he had in his hand. To show the nature of the assault by the wife that the prisoner had reason to apprehend at the time, evidence of former attacks of this sort was allowed to be given. *Reg. v. Hopkins*, 10 Cox. C. C. 229. A general inspector of railways is not liable for the immediate negligence of a plate-layer, where a fatal accident occurs. *R. v. Berge*, 4 J. & P. 504. See indictment against engine-driver and fireman for negligence, &c. *Reg. v. Trainer*, 4 J. &L. 105. A soldier who in the ordinary course of ball practice, acting under the command of the superior officer, killed a man, who was lawfully passing near the spot, is not guilty of manslaughter. *R. v. Hutchinson*, 9 Cox C. C. 555. Where a master culpably neglects to supply proper food and lodging to a servant when reduced to and in such an enfeebled state of body and mind as to be helpless and unable to take care of himself, or is under the dominion and restraint of the master, and unable to withdraw himself from his control, and the servant's death is caused or accelerated by such neglect, the master is guilty of manslaughter. *Reg. v. Smith*, 1 L. & C., C. C. 607; 10 Cox, C. C. 82; 34 L. J. M. C. 153; 12 L. T. N. S. 608. A young woman, eighteen years of age and unmarried, who usually supported herself by her own labour, being about to be confined, returned to the house of her step-father and mother. The girl was taken in labour (the step-father being absent at his work). The mother did not take ordinary care to procure a midwife, though she could have got one, had she chosen; and in consequence the daughter died in her confinement. There was no evidence that her mother had any means of paying for the services of the midwife:—*Held*, under the circumstances, no legal duty on the part of the mother to call in a midwife, and this was no such breach of duty as to render her liable to be convicted of the manslaughter of her daughter. *R. v. Shepherd*, 31 L. J. R. N. S. M. C. 102; 1 L. & C. 147. There must be a competent knowledge and care in dealing with a dangerous drug. If a person is ignorant of the nature of the drug he uses, or is guilty of gross want of care in the use of it, he will be criminally responsible for the consequences. *Reg. v. Chamberlain*, 10 Cox, C. C. 486; 6 F. & F. 356. *R. v. Gray*, *id.* 1098. A man who having a horse, which he knows to be vicious and dangerous, turns it out upon a common, through which, to his knowledge, pass much frequented public footpaths, which are not fenced off, is guilty of culpable negligence, and if the horse kills any one passing over the common, may be convicted of manslaughter. *Reg. v. Dant*, 1 L. & C., C. C. 567; 10 Cox, C. C. 102; 34 L. J. M. C. 119; 12 L. T. N. S. 396. A. was indicted for feloniously shooting at the prosecutor, with intent to do grievous bodily harm to him. The jury found that he did not aim at the prosecutor or at any one in particular, but that he fired into a group of persons, intending generally to do grievous bodily harm:—*Held*, that he was guilty of the felony charged, and not merely of the misdemeanor of unlawfully wounding. *Reg. v. Fretwell*, 1 L. & C. C. C. 443; 9 Cox, C. C. 471; 33 L. J. M. C. 128; 10 L. T. N. S. 428.

[2] As to murder on board a foreign ship, *see Reg. v. Bjornsen*, 10 Cox, C. C. 74; 1 L. & C. C. C. 545; 34 L. J. M. C. 180. On the trial of a man and his wife for the murder of his mother by poison, the female having lived as servant in the family during the life of her husband's former wife, evidence admitted of the circumstances under which the former wife had died of poison. But there being evidence from which it appeared possible that the administration of poison might have been wilful, the hypothesis of culpable negligence was left to the jury as justifying a verdict of manslaughter. *Reg. v. Garner*, 3 F. & F. 681. As to discharging jury and the party being tried by another jury, *see* Indictment, and *Winsor v. The Queen*, 35 L. J. M. C. 110.

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NAME.[1] 5 Abr. 512. *See* also Bills and Notes; Marriage.

NAVIGATION. *See* also Canals, Rivers, Seashore, Watercourse.

I. General Principles, p. 329.

II. Rules Applicable to Sailing Vessels, p. 330.

III. „ „ Steamers, p. 330.

IV. Jurisdiction of Court of Admiralty and Proceedings therein in Collision Suits, p. 330.

I. General Principles.[2]

[1] A company cannot acquire the right to the exclusive user of a name which is merely descriptive of the class of business carried on by it. *Colonial Life Insurance Company v. Home and Colonial Insurance Company (Limited)*, 10 Jur. N. S. 967; 33 L. J. 741; 10 L. T. N. S. 448. But an injunction may be granted for fraudulently adopting the name of a tradesman. *Cave v. Myers*, 3 L. J. N. 277. By 6 & 7 Vic. c. 18, s. 17, every notice of objection shall be signed by the person objecting; it suffices if the usual signature of the objector is engraved in fac-simile on a stamp, and the objector himself impresses this stamp upon the notice of objection. *Bennett*, App., *Brumfitt*, Resp., 17 L. T. N. S. 213; 37 L. J. C. P. 25. *London Assurance v. London and Westminster Assurance Corporation*, 32 L. J. Chanc. 664; 8 L. T. N. S. 497—V. C.

[2] The sec. 328 of the Act of 1855, enacted that in every case of collision, in which it is practicable, the master must, immediately after the occurrence, cause a statement of it to be entered in the official log-book, to be signed by the master and mate or one of the crew. It is an acknowledged rule of sailing, that if a vessel is going close-hauled to the wind, and another, meeting her, is going free, the latter must go to leeward. Where vessels would pass so near as to involve a risk of collision, the helms of both ships must be put to port so as to pass on the port side of each other. As to exhibiting lights, see order made by the Commissioners of the Admiralty, 1858. Vessels having the wind fair must give way to those sailing by or against the wind. As to steamers who are on different courses, and must unavoidably or necessarily cross so near to each other that, by continuing their respective courses, there would be a risk of collision, each vessel should put her helm to port, so as always to pass on the larboard side of each other.

The 17 & 18 Vic. c. 120, did not repeal, but only modified, the 9 & 10 Vic. c. 93, so far as the latter created liability for the loss of life by collision at sea. *Glaholm v. Barker*, 1 L. J. C. App. 223; 35 L. J. Ch. 259; 34 Beav. 305. But the liability is limited to 15*l.* per ton of the registered tonnage. When a collision takes place which might probably endanger life, it is the duty of the vessel to stay by until the extent of the damage is ascertained. *The Queen of the Orwell*, 11 W. R. 499; 7 L. T. N. S. 839—Adm. If it does not the burden of proof that the collision did not take place by its default is thrown upon the owners. *Id.* The 17 & 18 Vic. c. 104, s. 298, which enacts, that in certain cases of collision the owner of a ship shall not be entitled to recover, does not apply to the owner of cargo suing, *The Milan*, 1 Lushington, 388. The regulations framed in pursuance of the authority given by the 25 & 26 Vic. c. 63, s. 25, do not apply to her majesty's ships. *Topaze*, 12 W. R. 923; 10 L. T. N. S. 659—Adm. In a cause of collision beyond British jurisdiction between an English and a Belgian vessel:—*Held*, that the 25 & 26 Vic. c. 63, s. 54, with respect to limited liability, applies equally to British and foreign vessels. *The Amalia*, 1 B. & L. 151. Collision between two vessels, one being in tow of a steam-tug in charge of a licensed pilot, and the other also having a licensed pilot on board:—*Held*, that the master and owners of the offending vessel were protected by having a licensed pilot on board, who was alone liable for the damages sustained. *The Meanger* and *The Florence Nightingale—Garvin v. Bibby*, Moore, P. C. C. N. S. 63. *See Tyne Improvement Commissioners v. General Steam Navigation Company*, 2 L. R. Q. B. 65. Where there has been a breach of the Admiralty regulations and a collision ensues, the *primâ facie* presumption is that it was occasioned thereby. *The Palestine*, 13 W. R. 111.

II. Rules Applicable to Sailing Vessels.[1]

III. „ „ Steamers.[2]

IV. Jurisdiction of Court of Admiralty and Proceedings therein in Collision Suits.[3]

NAVY. *See* 20 & 27 Vic. c. 69, as to the Royal Navy reserve. 26 & 27 Vic. c. 116, as to the appointment of navy prize-agents, and regulates their duties and remuneration. 27 & 28 Vic. c. 24, the appointment, duties, and remuneration of agents for ships of war, and for the distribution of the salvage, bounty, prize-money, &c. 27 & 28 Vic. c. 85, as to provisions for prevention of contagious diseases. 27 & 28 Vic. c. 91; 32 & 33 *id.* c. 12, as to provisions for the protection of naval and victualling stores. As to naval stores, 30 & 31 Vic. c. 119, s. 20.

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[1] When a vessel is sailing upon a wind, and passes from one tack to another, the usual and ordinary mode of effecting this change is by tacking, and not by wearing. *Grindley v. Stevens—The Falkland—The Navigator*, 1 Moore, P. C. C. N. S. 379. *See The Constitution*, 10 Jur. N. S. 831; 10 L. T. N. S. 894—P. C. When two vessels are approaching, one heading N. N. E. ½ E., and the other S.W. ½ W., they are crossing and not meeting. *Henry—St. Cyran*, 12 W. R. 1014—Adm.

[2] By a narrow channel in 17 & 18 Vic. c. 106, s. 297, is meant a channel bounded on either side by land, so that it is impossible to navigate at any great width between the two banks. *The Florence Nightingale*, 9 Jur. N. S. 475; 8 L. T. N. S. 34—P. C. A steamer going down a river, having disobeyed without cause the direction of the 17 & 18 Vic. c. 104, s. 297, keeping to the starboard side of the channel, and the pilot as well as those on board being remiss in keeping a lookout, is liable for damage to a barge. *The Malvina*, 9 Jur. N. S. 527; 11 W. R. 576—P. C. *The Smyrna*, 10 Jur. N. S. 977; 11 L. T. N. S. 74—P. C.

[3] Whenever, through the neglect or misconduct of those on board a vessel, goods shipped have received damage, *primâ facie* the shipowner is responsible. *The St. Cloud*, 8 L. T. N. S. 54—Adm. The Court of Admiralty has jurisdiction of a collision between an English and an Irish vessel in the Great North Holland Canal. *The Diana*, 9 Jur. N. S. 26; 32 L. J. Adm. 57. And to entertain a suit against a steam-tug by the vessel in tow for damage done to such vessel by collision caused by the conduct of the tug. *The Night Watch*, 32 L. J. Adm. 47. So by sec. 7 of the 24 Vic. c. 10, the court has jurisdiction over a cause of damage done by a sea-going vessel to a barge within the body of a county. *The Malvina*, 1 Lushington, 493; 9 Jur. N. S. 527; 11 W. R. 576; 8 L. T. N. S. 403—P. C. *The Amalia*, 9 Jur. N. S. 1111; 32 L. J. Adm. 191; 8 L. T. N. S. 805—P. C. Cargo on board a ship to blame for a collision can only be arrested to obtain payment of the freight due to the shipowner, and therefore if no freight has accrued, the court will decree a release of the cargo. *The Flora*, 35 L. J. Adm. 15. Where plaintiff's ship and all the crew were lost by collision, it was held that plaintiff was under no obligation to call as witnesses any of the crew of defendant's ship. *The Aleppo*, 35 L. J. Adm. 9. A successful plaintiff in a cause of damage is entitled to be reimbursed to the extent, but only to the full extent, of the damage occasioned. *The Egyptian*, 10 L. T. N. S. 910—Adm. The burden of proving the damage done lies, in the first instance, upon the plaintiff. To a declaration claiming damages for a collision, the defendant pleaded a judgment *in rem* in the Admiralty Court:—*Held*, that the plea was bad. *Nelson v. Couch*, 15 C. B. N. S. 99; 10 Jur. N. S. 366. In a collision suit the court will admit the book kept in the Coastguard Office, containing the original entries made from the monthly returns sent to the office by the coastguard officers to show the state of the wind, &c., at the time of the collision, without calling the person who made the entries. *The Catherine Maria*, 1 L. R. Adm. & Ecc. 58. And a ship's log, on production by the officer of the Trinity House in whose custody such logs are kept, without requiring the evidence of the person who made the entries. *The Maria Das Dores*, 1 B. & L. 27. In a cause of collision, in which the evidence has been taken before an examiner of the court, the plaintiff's counsel is entitled to reply. *The Rjukan*, 14 W. R. 973—Adm. Action and cross-action in the Court of Admiralty; judgment, both ships to blame and damages to be divided; appeal by one party in both actions, and adherence to the appeal by the other party; the judgment being affirmed, each party was sentenced to pay his own costs. *The Saxonia—The Eclipse*, 1 Lushington 410—P. C. Generally where the collision is found to have been the result of inevitable accident, no costs are given. *The London*, 9 Jur. N. S. 1330; 9 L. T. N. S. 348.

NEGLIGENCE. 5 Abr. 517. *See* also Accident, 1 Abr. 82; Bank of England, 2 Abr. 133; Building Acts, 2 Abr. 536; Distress, 4 Abr. 28; Easements, 4 Abr. 150. *See ante*, Master and Servant; *post*, Nuisance; Railway.

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V. „ Navigation of Vessels. *See ante*, Navigation, p. 329.

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VII. „ Negligence in Management of Real Property, and Acts of Parties connected therewith, *id.*

(A) *Builders, Contractors, Surveyors, &c. id.*

(B) *Leaving Open Apertures, Areas, Gates, &c., or Heaps, &c., on, adjoining, or adjacent to Highways, Commons, &c.* p. 334.

(C) *Railways, Railway Stations, Bridges, and Works*, p. 334. *See* also *post*, Nuisance; Railways.

(D) *Chattels Falling from Buildings, Obstructions from Buildings, &c.* p. 336.

VIII. „ Compensations to Representatives of Deceased Parties under Lord Campbell's Act, *id.*

IX. „ Remedy by Action, p. 337.

I. As to the General Principles applicable to, and Effect of being a Contributory Cause.[1]

[1] Legal negligence is the omission to exercise ordinary care and ordinary skill. 19 L. T. Ad. 89. Or by departing from ordinary mode of user. *Holmes v. N. E. R. Co.* 38 L. J. Ex. 161. *Redhead v. Midland R. Co.* 38 id. Q. B. 169. Where a statutory obligation is imposed on a person, he is liable for any injury that arises to others in consequence of its having been negligently performed, and this, whether it is performed by himself or by a contractor employed by him. *Gray v. Pullen*, 5 B. & S. 970, Ex. Ch. Where there are two modes of doing a work in a public highway, from which damage may result to a passer-by, the one mode more dangerous than the other, though both are usual modes, it is for the jury to say whether the adoption of the former mode amounts to negligence. *Cleveland v. Spier*, 16 C. B. N. S. 399. The gratuitously permitting a person to use a shed, by himself or his servant, for a particular purpose, is a mere revocable license, and has no analogy to a bailment of personal property; and the only duty imposed upon such person is, that there should not be negligence in the use of the shed. *Woodman v. Joiner*, 10 Jur. N. S. 852; 33 L. J. Ex. 297; 3 H. & C. 602. L., a gas-fitter, being lawfully on the premises of the defendant, examining the gas-burners, and being accompanied by one of the defendant's workmen, accidentally fell through an open shaft or lift, and was seriously injured. It was not dangerous to persons usually employed there, but was so as to strangers. The shaft was only fenced on two sides:—*Held*, the defendant was liable. *Indermaur v. Dames*, 1 L. R. C. P. 274; 35 L. J. 184. Where, in an action for negligence, there is any evidence of negligence by plaintiff, the question whether it was contributory to the accident should be left to the jury, and the proper question for them is "whether the damage was occasioned entirely by the negligence or improper conduct of the defend-

II. As to Particular Persons.

(A) *Adjoining Owners.*[1]

(B) *Guests.*[2]

(C) *Infants.*[3]

(D) *Public Officers, Commissioners, Trustees, &c.*[4]

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ant; or whether the plaintiff himself so far contributed to the misfortune by his own negligence or want of ordinary and common care and caution, that, but for such negligence, &c., on his part, the misfortune would not have happened." *Tuff v. Warman*, 5 C. B. N. S. 573. *Walton v. London, Brighton, and South-Coast Railway Company*, 14 W. R. 395. *Higgs v. Maynard*, C. P. 14 W. R. 610; *Hughes v. Macfie*, 9 L. T. N. S. 513, Ex.; 1 L. J. 33. *Skelton v. L. N. W. R.* 36 L. J. C. P. 249. *James v. Gt. Eastern Railway Company*, 4 Hurl & Colt, 699. In deciding whether in an action for negligence evidence of a default on a defendant's part has been laid before the jury by the plaintiff, the court must use the ordinary experience of life, and must consider whether the evidence of negligence be reasonable. *Crafter v. Metropolitan Railway Company*, 1 H. & R. 164; 12 Jur. N. S. 272. A vessel, whilst being towed into a harbour by a steam-tug, got aground, and the defendant's vessel, which was being towed in at the same time by the same tug, astern of the plaintiff's vessel, without any active default on the defendant's part, struck and damaged the plaintiff's vessel:—*Held*, no evidence to go to a jury of negligence for which the defendant was liable. *Harris v. Anderson*, 14 C. B. N. S. 499. Accidents may be of such a nature that negligence may be presumed from the mere fact of the accident; the presumption depending on the nature of the accident. *Byrne v. Boadle*, 33 L. J. Ex. 13; 9 L. T. N. S. 450.

[1] In order to entitle the owner of land to succeed in an action against a neighbour for excavating near his boundary, it is necessary that appreciable damage should have been caused thereby. *Smith v. Thackerah*, 1 L. R. C. P. 564; 12 Jur. N. S. 545; 35 L. J. C. P. 276; 14 L. T. N. S. 761. Where a public body is constituted by statute, as, for instance, a harbour or dock company, having the right to levy tolls for its own profits, they are liable to persons using the works and paying the tolls for damage occasioned by the neglect in not keeping the works in proper repair. *Parnaby v. Lancaster Canal Company*, 11 Ad. & El. 223. And the same liability exists where that public body are trustees of the tolls, not for the company's profit, but for public (not Government) purposes. *Duncan v. Findlater*, 6 Cl. & F. 894. *Mersey Dock Trustees v. Gibbs, Same v. Penhallow*, 1 L. R. H. L. 93; 35 L. J. Ex. 225. *Metcalfe v. Hetherington*, 7 Ex. 257.

[2] A declaration alleged that defendant negligently hung a chandelier in a public-house knowing that plaintiff and others would be under it, and that unless carefully hung it would fall and injure them, and without warning plaintiff of the dangerous way in which it was hung, whereby the chandelier fell on and injured plaintiff:—*Held*, to disclose no cause of action. *Collis v. Selden*, 37 L. J. C. P. 233; 4 H. & C. 388; 1 L. R. Ex. 339; 35 L. J. Ex. 161. But see *Pickard v. Smith*, 10 C. B. 470.

[3] Defendant having placed a crushing-machine in a public market for exhibition, a child was injured by putting his fingers between the cog-wheels while another child was turning the handle:—*Held*, that the defendant was not liable for negligence in leaving the machine unguarded; and that the injury sustained by the child was the direct result of the improper meddling with the machine. *Mangan v. Atherton*, 35 L. J. Ex. 161; 1 L. R. Ex. 239.

[4] The common law gives a right of action against those neglecting a duty cast upon them to those who in consequence sustain damage. *Cox v. Wise*, 14 L. T. N. S. 891, Q.B., in error. A public body, though acting gratuitously for the benefit of the public, is responsible for damage resulting from the negligent performance of the duty intrusted to it. *Clothier v. Webster*, 12 C. B. N. S. 790; 9 Jur. N. S. 231. *Hartnell v. Ryde Commissioners*, 8 L. T. N. S. 574—Q. B. *Metcalfe v. Hetherington*, 5 H. & N. 713. *The Mersey Docks Trustees v. Gibbs, Same, and Penhallow*, 1 L. R. H. L. 93; 35 L. J. Ex. 225; 14 L. T. 677. *Reg. v. Delamere (Lord)*, 13 W. R. 757—Ex. Ch. A person who sustains injury from the execution of works authorised by a statute is not, generally speaking, entitled to compensation, under the compensation clauses of the statute, unless the injury sustained is such as, had the works not been authorised by the statute, would have given the claimant a right of action. *New River Company v. Johnson*, 2 Ell. & Ell. 435. Although a water company is not liable for the unforeseen results of an extraordinary frost, yet the company is bound to take reasonable care to provide against the consequences of ordinary frost. *Steggles v. New River Company*, 11 W. R. 234—Q. B. *Coe v. Wise*, 10 Jur. N. S. 1019; 33 L. J. Q. B. 281; 10 L. T. N. S. 666. But a company charged with the duty of repairing a drain is responsible for the injury arising from the banks of the drain giving way at a period of extraordinary rainfall, which swelled the drain, in consequence of the outlet not

IV. As to Management of Horses and Carriages.[1]

VI. As to Management of Docks, Canals, &c.[2]

VII. As to Negligence in Management of Real Property, and Acts of Parties connected therewith.

(A) *Builders, Contractors, Surveyors, &c.*[3]

being sufficiently widened by other parties, whose duty it was to keep the outlet of a certain width. *Harrison v. Great Northern Railway Company* 10 Jur. N. S. 992; 33 L. J. Ex. 266. The Towns Improvement Clauses Act (10 & 11 Vic. c. 34, s. 52), imposes on the commissioners the duty of fencing footpaths, if needed, for the protection of passengers, and leaves them no discretion; and are therefore liable, in their corporate capacity, to an action for the negligent omission to fence a footpath. *Ohrby v. Ryde Commissioners*, 10 Jur. N. S. 1048; 33 L. J. Q. B. 296.

[1] B.'s horse, being on a highway, kicked a child who was playing there. There was no evidence to show how the horse came on the spot, or what caused him to kick the child, or that he was accustomed to kick:—*Held*, no evidence from which a jury would be justified in inferring that B. had been guilty of actionable negligence. *Cox v. Burbidge*, 13 C. B. N. S. 430; 9 Jur. N. S. 970; 32 L. J. C. P. 89. So when the plaintiff, a passenger, after getting into a carriage of a train on defendants' railway, left his hand for about half a minute on the door-jamb; defendants' guard, after crying out to the passengers to take their places, shut the doors of the carriages of the train, and not seeing plaintiff's hand, injured his thumb in shutting the door:—*Held*, distinguishing the case from *Fordham v. The London, Brighton and South Coast Railway Company*, that there was no evidence of negligence by defendants, and that there was evidence of negligence by the plaintiff. *Richardson v. The Metropolitan Railway Company*, 374 C. P. 300. The driver of an omnibus ran over and killed a person who was crossing the road at an incline. The evidence proved that the accident occurred by reason of there not being a "skid" with the omnibus, and thereby rendered it necessary for the driver to watch his horses, which prevented his seeing the deceased until he was close upon him:—*Held*, this was evidence of negligence in an action against the omnibus proprietor. *Springett v. Ball*, 4 F. & F. N. P. Cas. 472.

[2] A custom-house officer was lawfully in the London Docks in the discharge of his duty, when, on passing through a door from one warehouse to another, a bag of sugar, which was being lowered by a crane overhead, fell on him and injured him, but there was no other evidence to show how or in what manner the accident happened:—*Held*, that the happening of the accident was sufficient *primâ facie* evidence of negligence on the part of the dock company to be left to the jury. *Scott v. London Docks Company*, 13 W. R. 99; 11 L. T. N. S. 383—Ex. In an action against a canal company for damage caused by the emission of sparks from the engines of a steamboat used by them, evidence being given that there were some mechanical appliances which were used to prevent the emission of sparks, and that there were species of fuel and modes of dealing with the furnaces for that object, which had not been adopted, the question was left to the jury whether there had been a neglect by the company of any practicable precautions which they reasonably ought to have used. *Longman v. Grand Junction Canal Co.* 3 F. & F. 736.

[3] The defendant contracted with the Lords of the Admiralty for the erection of docks, and for that purpose sunk piles in the navigable part of the channel. After the completion of the works, and after a reasonable time for the removal of the piles, the defendant sold the piles to A., who undertook to remove them by a certain date, or sooner if required by the Lords of the Admiralty. The Admiralty subsequently required A. not to draw the piles, and he, acting under those orders, cut the piles off on a level with the bed of the channel. The soil was subsequently washed from around the stumps, and the plaintiff's vessel struck against them and was injured. In the position in which the piles existed at the time the defendant delivered them up to A., the damage could not have been done without the plaintiff's gross negligence:—*Held*, that there was no cause of action against the defendant. *Bartlett v. Baker*, 34 C. J. Ex. 8; 3 H. & C. 153. *Fletcher v. Rylands*, 3 H. & C. 774; 11 Jur. N. S. 714; 34 L. J. Ex. 177; 13 L. T. N. S. 121. *See Gordon v. St. James's Vestry, Westminster*, 13 L. T. N. S. 511—Exch. A. received an injury by falling at night from the highway into an unfenced and unlighted sewer, which was being constructed under a written contract between B. and certain local commissioners. A clause in the contract prohibited subletting without the engineer's consent. B. contracted by parol with N., a competent workman, to do the excavation and brickwork, and the watching, lighting, and fencing. B.'s name was on the carts, and also on a temporary office near the works. He did not interfere during the progress of the work, but admitted that he should have dismissed N. if dissatisfied with the work. The clerk of the works was in the employment of the commissioners:—*Held*, that there was evidence for the jury of B.'s liability. *Blake v. Thirst*, 2 H. & C. 20. But where a company who appointed a clerk of the works to superintend the erection of a cotton mill, and that the building contracts were properly performed:—*Held*, not

(B) *Leaving open Apertures, Areas, Gates, &c., or Heaps, &c. on, adjoining, or adjacent to Highways, Commons, &c.*[1]

(C) *Railways, Railway Stations, Bridges, Works, and injuries connected with.*[2]

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liable in an action for damage by negligence; there being no evidence of personal negligence on the part of the company, or of the incompetency of the clerk of the works. *Brown v. Accrington Cotton Company*, 3 H. & C. 511. *Gray v. Pullen*, 13 W. R. 257—Ex. Ch. An owner of premises within the area of the 18 & 19 Vic. c. 120, and having authority under sec. 77 to construct a proper drain, thence to the common sewer, contracted with H. to do the work:—*Held*, by the general rule applicable to such cases, H., and not the owner, was liable for the negligence, and that there was nothing in the act to alter the respective liabilities of employers and contractors, and render the owner personally liable. *Gray v. Pullen*, 32 L. J. Q. B. 169; 11 W. R. 616. *Rylands v. Fletcher*, H. L. 37 L. J. 161. A contractor employed to make a sewer under the statute is not liable for any natural subsidence of the soil. *Hyam v. Webster*, 3 L. J. N. 268. The unloading of a cargo of corn, for which the defendants were paid by the owner, being done by men engaged and paid by a ganger or contractor, with whom the defendants contracted, they having no control over the men:—*Held*, not liable for an injury caused by their negligence. *Innocent v Peto*, 4 F. & F. 8.

[1] If an excavation has been made so near to a highway since its dedication and adoption as to create or increase danger to the public, the person making it is not absolved from liability by a statutory obligation to fence the highway. *Wetter v. Dunk*, 4 F. & F. 298. The owner of premises attached to which was an area, let the same to a tenant from year to year, and died, having devised the property, with an iron grating over the area improperly constructed and out of repair, so as to amount to a nuisance. The defendant having no notice of the nuisance, suffered the tenant to remain in the occupation upon the same terms as before, receiving rent. The wife of A. having sustained damage by reason of the dangerous condition of the grating (5 B. & S. 78), that the defendant, as reversioner, was liable to an action for the damage. *Gandy v. Jubber*, 5 B. & S. 485; 33 L. J. Q. B. 151. See *Robins v. Jones*, 33 L. J. C. P. 1; 9 L. T. N. S. 523; 15 C. B. 221. *Hadley v. Taylor*, 11 Jur. N. S. 979; 14 W. R. 59; 13 L. T. N. S. 368—C. P. The owner of a house in the metropolis employed a contractor to make a drain to the main sewer, under 19 & 20 Vic. c. 120. The contractor made the drain, but filled up the ground so negligently where it crossed a public footway, that it subsided and a person fell and was injured:—*Held*, that the owner of the house was liable; for ss. 77 & 110 imposed on the owner of the house the duty of filling up the cutting across the footway properly. *Gray v. Pullen*, 34 L. J. Q. B. 265; 11 L. T. N. S. 569—Ex. Ch. Through the defect of a gate which the defendant was bound to repair, his horse got out of the defendant's farm into an occupation road and strayed into the plaintiff's field, where it kicked the plaintiff's horse:—*Held*, that the defendant was liable for the trespass, and that it was not necessary to prove that his horse was vicious and that he was aware thereof. *Lee v. Riley*, 18 C. B. N. S. 722; 11 Jur. N. S. 822; 34 L. J. C. P. 212. And that the damage was not too remote. *Id.* A. and B. were in occupation of the minerals under a field which was in the occupation of C., and had sunk a shaft for getting the minerals beneath it. When they had ceased to work the shaft, they covered it over in such a manner as not to afford a proper protection for horses in the field. C. turned out a mare in the field, and she fell down the shaft and was killed, without any negligence on his part:—*Held*, that A. & B. were liable. *Groucott v. Williams*, 32 L. J. Q. B. 237; 8 L. T. N. S. 458. The defendants were the occupiers of a warehouse on one side of a street into which their cellar opened. The public had a right of way over the whole street subject to the existence of the cellar; but the only flagged footpath was on the other side. The defendants took off the lid which covered their cellar and left it nearly upright against their wall. A child jumped from the lid, pulled it over, injuring himself and another child:—*Held*, that the defendants were not liable at the suit of the first child, who had voluntarily meddled with that which, if left alone, would not have hurt him; but that they were liable to the second child, if not a joint actor with the first. *Hughes v. Macfie*—*Abbott v. Macfie*, 2 H. & C. 744; 10 Jur. N. S. 682; 33 L. J. Exch. 177.

[2] To establish a case of negligence against a railway company, for damage for injury happening in consequence of an alleged defectiveness in an erection for the use of their passengers, it must be proved that the erection was an improper one for its purpose, and it is not sufficient to show that by some alterations it might have been made more safe. *Crafter v. Metropolitan Railway Company*, 35 L. J. C. P. 132; 1 L. R. 399. But a railway company have a right to carry on their business on their own premises in such a way as they think fit; and, so far as the conduct of such business is concerned, to use defective machinery, *e.g.*, for hoisting goods on their own premises, merely compensating the owners for any injury done thereby to such goods, and they are not guilty of negligence, or liable in an action

for damages, *quoad* a third party lawfully on their premises who, without invitation by words or conduct on their part so to do, chose to pass under a package of goods which was in the act of being hoisted by a crane, and which slipped from the sling by which it was defectively suspended, there being another way by which he might have gone without passing under the package, and the company having no reason to expect that people would pass underneath. *Griffiths v. The London and North-Western Railway Company*, 14 L. T. N. S. 797 Ex. *Welfare v. L. and B. R. Co.* 38 L. J. Q. B. 241. Where an injury is alleged to have arisen from the improper construction of a railway, the fact of its having given way will amount to *primâ facie* evidence of its insufficiency; and this evidence may become conclusive from the absence of any proof on the part of the company to rebut it. *Great Western Railway Company of Canada v. Fawcett — Great Western Railway Company of Canada v. Braid*, 1 Moore, P. C. C. N. S. 101; 9 Jur. N. S. 339. It is not necessarily negligence in railways omitting to station a watchman at a crossing on the line on a level, close to the stations. *Bilbee v. London and Brighton Railway*, 34 L. J. C. P. 182; but leaving a gate open is an intimation that no train was due. *Id. Stubley v. London and North Western Railway Company*, 1 L. R. Ex. 13. Hence where a foot-passenger crossed at a carriage-crossing, one of the gates being open, no gateman being there (contrary to 8 & 9 Vic. c. 20, s. 47), and a train was overdue:—*Held*, this was negligence, and that the railway was liable for an accident occurring. *Stapley v. London, Brighton, and South Coast Railway Company*, 1 L. R. Ex. 21; 4 H. & C. 83. A railway company, for the more convenient access for passengers between the two platforms of a station, erected across the line a wooden bridge, which the jury found to be dangerous:—*Held*, that the company was liable for the faulty construction of the bridge, although there was a safer one about 100 yards further round, which might be used. *Longmore v. Great Western Railway Company*, 19 C. B. N. S. 183. A railway passenger was set down after dark on the side of the line opposite to the station and place of egress. The train from its length blocked up the ordinary crossing to the station. The ticket collector stood near the crossing with a light, telling the passengers, as they delivered their tickets, to pass on. The passenger passed down the train to cross behind it, and from the want of light stumbled over some hampers put out of the train, and was injured:—*Held*, that these facts disclosed evidence for the jury of negligence. *Nicholson v. Lancashire and Yorkshire Railway Company*, 3 H. & C. 534; 34 L. J. Exch. 84; 12 L. T. N. S. 391. Plaintiff in getting into a railway carriage put his hand on the hinge side of the door, which was open, and before he had got quite in, the guard, without any warning, slammed the door upon plaintiff's hand, and so jammed it between the door and door-post. There was no handle to get into the carriage by, or at least none which could be seen:—*Held*, there was no such clear evidence of contributory negligence on the part of the plaintiff that the judge at the trial ought to have withdrawn the case from the jury. *Fordham v. The London, Brighton, and S. C. R. Co.* 37 L. J. C. P. 176; 33 id. Ex. Ch. 324. At a level crossing near a station, where there were gates for a private carriage-way, which were locked, and swing gates for foot passengers, the company adopted a mechanical mode of fastening the swing gates when a train was approaching. Usually, but not invariably, the gates were thus fastened:—*Held*, that the fact of the swing gate not being fastened was no equivalent to a notice that the line was free, and that a foot passenger was still bound to use proper caution. *Skelton v. London and North Western Railway Company*, 2 L. R. C. P. 631; 36 L. J. C. P. 249; 15 W. R. 925; 16 L. T. 563. But the fact that the whistle was not used in approaching in the dusk a level crossing much used at that time by workmen going to their work, was held evidence of negligence. *James v. Great Northern Railway Company*, 2 L. R. C. P. 634; 36 L. J. 255. *Lunt v. London and North-Western Railway Company*, 1 L. R. Q. B. 277; 35 L. J. 105. *Wyatt v. Great Western Railway Company*, 11 Jur. N. S. 825; 34 L. J. Q. B. 204; 12 L. T. N. S. 568. *Siner v. The Great Western Railway Company*, 37 L. J. Ex. 98; 38 id. 67; 3 L. R. Ex. 150; 18 L. T. 760. *Adams v. Lancashire R. Co.* 38 L. J. C. P. 277. In the absence of evidence to the contrary, trains running over a particular line of railway are to be presumed to be the property of, or at any rate under the control of, the company to whom the line belongs, although other companies have running powers over the part of the line in question. *Ayles v. The South Eastern Railway Company*, 37 L. J. Exch. 104. Where third parties, over whom a railway company had no control, were laying iron girders over the line of railway, and at the time of a train passing the girder was being moved, and fell on a carriage, whereby plaintiff was injured; and it was in evidence that the moving the girder was dangerous to any one underneath:—*Held*, that the railway company not having placed any person to warn the workmen of the approach of trains, was evidence of negligence. *Daniel v. Metropolitan Railway Company*, 3 L. R. C. P. 216; 37 L. J. 146; 18 L. T. 57. Defendants, a railway company used a locomotive engine, which, while passing over the line, emitted sparks, although all reasonable precautions had been taken to prevent its doing so. The sparks were blown on to a haystack of the plaintiff, which was burnt. The act under which the company was incorporated did not authorise them to use locomotive engines:—*Held*, that defendants if they chose to use such engines must do so at their peril. *Jones v. The Festiniog Railway Company*, 37 L. J. Q. B. 214. *Manchester South Junction*

(D) *Chattels falling from Buildings, Obstructions, &c.*[1]

VIII. As to Compensations to Representatives of Deceased Parties under Lord Campbell's Act.[2] 9 & 10 Vic. c. 93.

Railway Company v. Fullarton, 14 C. B. N. S. 54; 11 W. R. 754. *Lunn v. The London and North Western Railway Company*, 35 L. J. Q. B. 105. A railway company is not liable for injury to the guard of a train, occasioned by the negligence of the ganger of the platelayers, the two servants being engaged in one common object, viz., the safe conduct of the passengers on their journey. *Waller v. South Eastern Railway Company*, 2 H. & C. 102.

[1] The plaintiff was walking in a public street, past the defendant's shop, when a barrel fell upon him from a window above the shop, and injured him:—*Held*, evidence of negligence to cast on him the onus of proving that the accident was not caused by his default. *Byrne v. Boadle*, 2 H. & C. 722; 12 W. R. 279. The plaintiff going to the doorway of a house in which the defendant had offices, was pushed out of the way by a servant of the defendant, who was watching a packing-case which belonged to the defendant, and was leaning against the wall of the house. The plaintiff fell, and the packing case fell on his foot and injured him. There was no evidence as to who placed the packing-case against the wall or what caused its fall:—*Held*, that there was a *primâ facie* case against the defendant to go to the jury, the fall of the packing-case being some evidence that it had been improperly placed against the wall. *Briggs v. Oliver*, 35 L. J. 163. Ex.; 14 L. T. N. S. 412. It is the duty of the occupier of a building, with reference to persons resorting thereto in the course of business upon his invitation, express or implied, to exercise reasonable care to prevent damage happening to them from ususual danger in the construction of the premises. *Indermaur v. Dames*, 1 H. & R. 243; 35 L. J. C. P. 184. But a landlord who lets a house in a dangerous state is not liable to the tenants, customers, or guests for accidents happening in consequence during the term. *Robbins v. Jones*, 15 C. B. N. S. 221. A carman was sent by his employer to the defendant's premises to fetch some goods. He was directed by a servant of the defendants to go along a passage to a counting-house, where he would find the warehouseman. The passage was dark, and in going along it he fell down a staircase, and was injured:—*Held*, that the defendants were not responsible, as there was no obligation on them to light the passage or fence the staircase. *Wilkinson v. Fairrie*, 1 H. & C. 633; 9 Jur. N. S. 280; 32 L. J. Exch. 73; 7 L. T. N. S. 599.

[2] By 27 & 28 Vic. c. 95, after reciting 9 & 10 Vic. c. 93, it is enacted by section 1, so often as it shall happen in any of the cases provided for by the said act, that there shall be no executor or administrator of the person deceased, or that there being such executor or administrator, no such action as in the said act mentioned shall, within six calendar months after the death of such deceased person as therein mentioned have been brought by the executor or administrator, then in such case such action may be brought in the name of all or any of the persons for whose benefit such action would have been if it had been brought in the name of such executor or administrator; and shall be subject to the same regulations and procedure, as if it were brought by and in the name of such executor or administrator. By sec. 2, it is enacted that it shall be sufficient, if the defendant pay money into court, that he pay it as a compensation in one sum to all persons entitled without specifying the shares into which it is to be divided by the jury; and if the said sum be not accepted, and an issue taken as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue. In these suits the loss of the reasonable probability of pecuniary benefit from the continuance of the life of the deceased is a sufficient damage to maintain the action. *Pym v. Great Northern Railway Company*, 4 B. & S. 396; 10 Jur. N. S. 199—Ex. Cham. 32 L. J. Q. B. 377. See 2 B. & S. 759. The statute gives to the personal representative a cause of action beyond that which the deceased would have if he had survived, and based on a different principle. *Id.* No compensation can be given by way of solatium for grief or loss of the society of the deceased. *Id.* On the death of a person whose income arose from land and personalty independently of any exertion of his own, no portion of which was lost to his family by his death, an action is maintainable if, in consequence of the death, the mode of its distribution among the members is changed. *Id.* In estimating the damages the amount of the life insurances left by the deceased should be deducted from the amount. *Hicks v. Newport, Abergavenny, and Hereford Railway Company*, 4 B. & S. 403. An illegitimate child is not within the act. *Dickinson v. North Eastern Railway Company*, 2 H. & C. 735; 33 L. J. Exch. 91. Under 9 & 10 Vic. c. 93, a plaintiff cannot have a verdict for nominal damages, and cannot recover for expenditure on the deceased in his lifetime, made necessary by the negligence, which would not have constituted a debt from him if he had lived. *Boulter v. Webster*, 13 W. R. 289; 11 L. T. N. S. 598—Q. B. In an action by a widow of a man who had been employed with others by the defendant, to shore up an arch, and was killed by its falling upon him:—*Held*, that the question was not as to the

IX. Remedies by Action.[1]

NET Profits.[2]

NEW Assignment. 5 Abr. 536.[3]

NEWSPAPER,[4] 5 Abr. 538. *See* Libel.

NEW Trial. See *post*, Trial.

NONSUIT.[5]

NOTICE of Action. 5 Abr. 547.

I. In General, p. 338.

II. Form, Notice, Requisites, and Service of, p. 338.

III. To Particular Persons, p. 338.

original construction of the arch, but as to the knowledge of the danger at the time of the accident, and whether the defendant had any better means of knowing of it than the deceased; and if not, then the jury should find for the defendant. *Ogden v. Rummens*, 3 F. & F. 751. In an action by a mother for the loss of her son, a boy of fourteen years of age, but who had never earned wages:—*Held*, that evidence of the boy's capabilities of earning sixpence a-day and of his previous conduct, from which to infer the probability of his continuing to live with his mother, and thereby conduce to her support, was evidence to go to the jury. *Condon v. Great Southern and Western Railway Company*, 16 Ir. Com. Law Rep. 415. The act 9 & 10 Vic. c. 93, is not inconsistent with 17 & 18 Vic. c. 104, s. 504, limiting the liability of shipowners in respect of loss of life, and therefore it is not repealed by 17 & 18 Vic. c. 120, s. 4. *Glaholm v. Barker*, 13 W. R. 671. Accord and satisfaction with the person injured is a defence to proceedings by his representative after his death. *Read v. Great Eastern Railway*, 37 L. J. Q. B. 278; 3 L. R. 556; 18 L. T. 82.

[1] A declaration stated that defendant was possessed of land, and a canal and cuttings intersecting the same, and of bridges across the canal, &c. communicating with and leading to certain docks of defendant, and that defendant knowingly suffered the said land, canal, &c., to be out of repair, by which means G., so using the land, &c., lost his life:—*Held*, the declaration did not show a wrongful act, or breach of some positive duty of defendant. *Gautret v. Egerton*, *Jones v. Egerton*, 2 L. R. C. P. 371; 36 L. J. 19. *See Corby v. Hill*, 27 L. J. C. P. 318. In an action for personal injury caused by the alleged negligence of the defendant, the plaintiff must adduce reasonable evidence to warrant the judge in leaving the case to the jury. *Scott v. London and St. Katherine Docks Company*, 3 H. & C. 596; 11 Jur. N. S. 204; 34 L. J. Ex. 220; 13 W. R 410; 13 L. T. N. S. 148—Ex. Ch. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care. *Ib. Williams v. Jones*, 3 H. & C. 602; 11 Jur. N. S. 843; 13 W. R. 1023; 13 L. T. N. S. 300—Ex. Ch. Some bales of cotton were insecurely piled in a warehouse by cotton-porters, acting under the control of the warehouse-keeper but in the employ of the defendant, to whom the bales belonged. A few days after the plaintiff, being lawfully in the warehouse to re-canvas the bales of another cotton person, was injured by the fall of one of the defendant's bales:—*Held*, that the defendant was responsible. *Murphey v. Coralli*, 3 H. & C. 402. *Speeding v. Young*, 33 L. J. C. P. 286. The fact of defendant's packing-case, which was placed against the outside wall of his premises, falling on the plaintiff, who was going to the house on business, the defendant's servant having placed it in that position, is evidence of negligence to leave to the jury. *Briggs v. Oliver*, 35 L. J. 163. *Higgs v. Maynard*, 14 W. R. 610. In an action by a child to recover damages for injuries purely personal, where the jury assessed the damages, presumably on the ground that the child would never be capable of earning his own living, the court refused to grant a new trial on account of the death of the child after verdict given and before judgment signed. *Kramer v. Waymarch*, 35 L. J. Ex. 148; 4 H. & R. 427.

[2] Mode of ascertaining what are of a joint-stock company, *see Binney v. Ince Hall Coal Company*, 35 L. J. 363, C.

[3] To a plea justifying abatement of a nuisance, *see Roberts v. Rose*, 33 L. J. Exch. 1; 9 L. T. N. S. 488. See *ante*, p. 1.

[4] Upon an application for leave to proceed against sureties upon the recognisance or bond to the Crown under the 11 Geo. 4, and 1 Will. 4, c. 73, the court acts judicially, not ministerially, and may refuse the application if, upon the facts before them, they are of opinion that the plaintiff is not entitled to proceed against the sureties. *Jones, In re* 2 H. & C. 270; 9 Jur. 126; 32 L. J. Ex. 254.

[5] In an action by a woman for assault, it appeared that the assault amounted to a rape. The judge stated that he should direct a verdict for the defendant, on the ground either that a rape had been committed, for which he had not been prose-

I. In General.[1]

II. Form, Requisites, and Service of Notice.[2]

III. To Particular Persons.[3]

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cuted, or that if the plaintiff had consented no assault had been committed. The plaintiff elected to be non-suited:—*Held*, right. *Wellock v. Constantine*, 32 L. J. Ex. 285; 7 L. T. N. S. 751. Where a plaintiff has obtained a verdict on a material issue, but leave is reserved for defendant to move to enter a nonsuit on a particular ground, and the ground is allowed, the court will not enter a nonsuit, but will deal with the case as they think best in the interests of of justice. *Winterbottom v. Lord Derby*, 2 L. R. Ex. 316.

[1] Notice of actions is as necessary for acts of *omission* as those of commission, *Wilson v. The Mayor of Halifax*, 37 L. J. Ex. 44; 3 L. R. Ex. 114. To entitle a party to a notice of action, it is enough that he honestly and *bonâ fide* believes he is acting in pursuance of a statute, whether there is reasonable ground for such belief or not. *Hermann v. Seneschal*, 13 C. B. N. S. 392; 32 L. J. C. P. 43. Where the question is whether a defendant is entitled to notice, as having done anything under an Act of Parliament, the proper direction for the jury is to ask the jury whether the defendant really believed that the facts existed which, if they had existed, would bring the case within the statute, and be a justification. *Heath v. Brewer*, 15 C. B. N. S. 803; 9 L. T. N. S. 653. See *Doust v. Slater*, 38 L. J. Q. B. 159. Any person found committing an offence within 24 & 25 Vic. c. 96, s. 103, may be immediately apprehended without warrant; and sect. 113 of that act gives the protection of notice before action for anything done in pursuance of that act:—*Held*, that defendant, though he acted *bonâ fide*, could not believe that he was arresting plaintiffs immediately they had been found committing the offence with which they were charged, and that, therefore, he was not entitled to the protection of section 113. *Downing v. Capel*, 36 L. J. M. C. 97. The 24 & 25 Vic. c. 96 (the Larceny Consolidation Act), s. 113, requiring a month's notice before any action or prosecution against any person "for anything done in pursuance of the act," has no application to the ordinary case of a private individual prosecuting another for a felony, and such a person is liable to an action for malicious prosecution without notice. *Mercer v. Gooch*, 15 L. T. N. S. 219—Ex. An owner of property is not justified in giving a person into custody found (popularly speaking) committing a nuisance against his premises, nor is he entitled to notice of action for having done so, unless he is fairly justified in believing that the person had the intention to soil or deface them, within the 2 & 3 Vic. c. 47, s. 54, or the intention to commit damage or injury or spoil to them within the 24 & 25 Vic. c. 97, s. 52. *Bayley v. Aldred*, 10 L. T. N. S. 523—Q. B. A notice of action under 2 & 3 Vic. c. 93, s. 8, need not be given in action of replevin. *Gay v. Mathews*, 9 Jur. N. S. 716; 32 L. J. M. C. 58; 4 R. & S. 42. *Leete v. Hart*, 3 L. R. C. P. 322; 37 L. J. 157; 16 W. R. 676.

[2] A notice of action to a high bailiff signed by B., the plaintiff, under 9 & 10 Vic. c. 95, s. 138, was, "It is my intention at the end of one calendar month from the date hereof to commence an action against you in the C. Q. B., to recover compensation in damages for a trespass and excessive levy on the 3rd of December, 1863, by selling and disposing of certain goods upon the premises, No. 80, D. Street, &c., to satisfy debt and expenses under an order recovered against me in the S. county court:"—*Held*, that the notice was sufficient. *Burton v. Le Gros*, 34 L. J. Q B. 91; 11 L. T. 270. Where notice of action is to be given one calendar month at least before any action shall be commenced, and notice given on the 29th of a month, an action may be commenced on the 29th of the following month, whatever the length of the preceding month. *Freeman v. Read*, 32 L. J. M. C. 226; 8 L. T. N. S. 458; 4 B. & S. 174. Under the Metropolitan Works Act a notice left with the foreman of a contractor, at a yard of his, where there was an office, on the day from which a calendar month expired the day before action, is sufficient, although it did not come to the hands of the defendant until the day afterwards. *Moody v. Delhick*, 4 F. & F. 938.

[3] By the directions of an officer of the vestry board, the defendant, in the honest belief that such officer was authorised by the board to give such directions, committed the act complained of:—*Held*, that the defendant, as he acted *bonâ fide*, under the direction of an officer of the board, was entitled to notice of action. *Chambers v. Reid*, 14 W. R. 370; 13 L. T. N. S. 703. And that the words in 25 & 26 Vic. c. 102, s. 106, "their or any of their directions," are not to be limited to the "board or vestry," but to be extended to the words following, "clerk, surveyor, contractor, officer," &c. *Ib.* A builder, engaged in building a house in the metropolitan district, is not within the protecting words of the 108th section of 18 & 19 Vic. c. 122, by which a district surveyor or other person is entitled to notice of action for anything done in pursuance of the act. *Williams v. Golding*, 11 Jur. N. S. 952; 35 L. J. C. P. 1; 1 L. R. C. P. 69. *See Whitmore v. Pearson*, 37 L. J. C. P. 156; 3 L. R. 422; and 25 & 26 Vic. c. 102, s. 106.

NOTICE. 5 Abr. 553. General Rules applicable to.[1]

of Trial. *See post*, Trial.

to Produce. *See* Evidence.

to Quit.[2] 5 Abr. 553.

NOT GUILTY, Plea of. 5 Abr. 561. *See* Particular Titles.

NOTARY.[3]

NUISANCE. 6 Abr. 1. *See* also Animals, Easements, Highways, Master and Servant, Landlord and Tenant, Lights, Negligence, Public Health, Rivers, Watercourse, Ways.

I. Private Nuisances, p. 340.

(A) *General Principles, creating or continuing*, p. 340.

II. Remedies for, p. 340.

(A) *By Action*, p. 340.

(B) *By Injunction*, p. 340.

III. Common or Public Nuisance, p. 340.

IV. Remedies, p. 341.

(A) *By Removal by Statutory Authority. See post*, Public Health.

(B) *By Indictment, and Proceedings incident to*, p. 341.

[1] Notice to a person, to be binding on him, must be given to him in the character in which such notice is intended to affect him, and not in any other character. *Beioley v. Carter*, 17 W. R. 130—C. Notice of a lease is not notice that the reversion remained vested in the lessor until his death. *Peyler v. White*, 12 W. R. 455. The rule, that notice to one partner in an ordinary trading partnership is notice to all the partners, does not apply to a joint-stock company. *Carew, In re*, 31 Beav. 39. Nor the doctrine of purchase for value without notice to a purchase of a leasehold interest without notice of the lessor's title, if it turn out that the lessor had no power to grant the lease. *Robson v. Flight*, 10 Jur. N. S. 1228. Sect. 76 of 18 & 19 Vic. c. 120, empowers a district board to alter or demolish a house, where the builder has neglected to give notice of his intention to build seven days before proceeding to lay or dig the foundation:—*Held*, that this does not empower them to demolish the building without first giving the party guilty of the omission an opportunity of being heard. *Cooper v. Wandsworth Board of Works*, 14 C. B. N. S. 180; 9 Jur. N. S. 1155; 8 L. T. N. S. 278.

[2] An agreement to give six months' notice to quit means, *primâ facie*, six lunar months, and cannot be explained to mean calendar months, by evidence of the usage of a particular estate. *Rogers v. Hull Dock Company*, 12 W. R. 1101; 11 L. T. N. S. 42. An agreement for a mining lease contained the following: "The lessees to be at liberty at any time hereafter to determine this agreement, or the lease agreed to be granted, and to abandon the ironworks on giving to the lessor six months' notice in writing of their intention so to do:"—*Held*, that this being a mining lease, and looking at the whole contract, the lessees were entitled to determine the tenancy at any time by six months' notice, expiring six months after the delivery. *Bridges v. Potts*, 17 C. B. N. S. 314; 10 Jur. N. S. 1049; 33 L. J. C. P. 338; 11 L. T. N. S. 373. A demise for "a term of three years determinable on a six months' previous notice to quit, otherwise to continue from year to year until the term shall cease by notice at the usual times," is a demise for three years, determinable only at the end of that period by six months' previous notice; and if not determined, a subsisting tenancy from year to year. *Jones v. Nixon*, 1 H. & C. 48. If the trustees in whom the legal estate in a farm is vested have authorised the *cestui que trust* to give to the tenant of the farm a notice to quit, such notice given by the *cestui que trust* to the tenant is not bad by reason of its being given in his own name, and not purporting to be given by him as agent of the trustees. *Jones v. Phipps*, 37 L. J. Q. B. 198. The effect of waiving a notice to quit given to a yearly tenant is to create a new tenancy; and, consequently, a guarantor of the rent under the original tenancy is not liable for rent becoming due after the time when the notice would have expired. *Tayleur v. Wildin*, 37 L. J. Ex. 173.

[3] Where a power of attorney has been executed before a notary in a British colony, an affidavit verifying the notarial signature is not necessary under 15 & 16 Vic. c. 86, s. 22. *Goff, In re*, 12 Jur. N. S. 595; 14 L. T. N. S. 727. And where sworn before a public notary in America may be filed without proof of the notary filling that character. *Smith v. Davies*, 17 W. R. 69 L. T.

I. Private Nuisances.

(A) *General Principles*,[1] *creating or continuing.*

II. Remedies for.

(A) *By Action.*[2]

(B) *By Injunction.*[3]

III. Common or Public Nuisance.[4]

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[1] In actions for nuisance, a difference is to be marked between an action that the alleged nuisance produces material injury to property, and an action that the alleged nuisance is productive of sensible personal discomfort. In certain cases a submission is required from persons living in society to that amount of discomfort which may be necessary for the legitimate and free exercise of the trade of their neighbours, which would not be required to circumstances the immediate result of which is sensible injury to the value of property. *The St. Helen's Smelting Company* (*Limited*) *v. Tipping* (H. of L.); Q. B. 34 L. J. Q. B. 66; 11 H. L. C. 642. Every man is bound to use his own property in such a manner as not to injure the property of his neighbour, unless, by the lapse of a certain period of time, he has acquired a prescriptive right to do so. But the law does not regard trifling inconveniences. In determining that question, the time, locality, and all the circumstances should be taken into consideration. *Bamford v. Turnley*, 3 B. & S. 66; 9 Jur. N. S. 377. *Tipping v. St. Helen's Smelting Company*, 4 B. & S. 608—Ex. Ch. *Scott v. Firth*, 10 L. T. N. S. 240. It is no answer to an action for burning bricks so near to the plaintiff's dwelling-house as to cause substantial annoyance and discomfort to himself and his family, that the act complained of was done at a convenient time and place. *Cavey v. Ledbitter*, 13 C. B. N. S. 470; 9 Jur. N. S. 798; 32 L. J. C. P. 104. Or the existence of other nuisances of a similar character in the neighbourhood, if it can be shown that the inconvenience is increased by the nuisance complained of. *Cropley v. Lightowler*, 36 L. J. Ch. 584. Although the fact of prospective nuisance is not of itself a ground for the interference, yet if some degree of present nuisance exists, the court will take into account its probable continuance and increase. *Goldsmid v. The Tunbridge Wells Improvement Commissioners*, 1 L. R. Ch. 349; 35 L. J. 382, Ch. A person who, for his own purposes, brings on his lands, and collects and keeps there, anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so, is *primâ facie* answerable for all the damage which is the natural consequence of its escape. *Fletcher v. Rylands*, 1 L. R. 1 Ex. 265; 35 L. J. 154. A nuisance of a permanent character having been created on land in the occupation of a tenant from year to year, the reversioner is liable for damage caused by it, if it is shown that since the creation of the nuisance and before the damage he might have determined the tenancy. *Gandy v. Jubbes*, 10 Jur. N. S. 652; 43 L. J. Q. B. 151; 12 W. R. 526; 9 L. T. N. S. 800.

[2] The law not only allows an action for damages, but also provides, as we have seen (*ante*, p. 1), the remedy, by abatement or compulsory removal of the nuisance itself. A person in the occupation of part of an unfinished house and premises as a tenant, is responsible for a nuisance committed on the premises. *Hadley v. Taylor*, 1 L. R. C. P. 53. As to whether former occupier is liable, see *Rich v. Bosterfield*, 16 L. J. C. P. 273. *Todd v. Flight*, 30 id. 21. A case on this point is now pending in the Ex. *Mugg v. Money*. See *Gandy v. Jubbes*, *supra*. The defendant, who was the owner of a building and a stack of chimneys, near to a building of the plaintiff, demised them when the chimneys were known by him to be ruinous and in danger of falling upon the building of the plaintiff:—*Held*, that an action for the injury the plaintiff had sustained from the fall of the chimney, would lie against the defendant, though he was not the occupier at the time of the fall. *Todd v. Flight*, 30 L. J. R. (N. S.) C. P. 21; 9 C. B. R. N. S. 377. An action for damage arising from a public nuisance on real property, as on a public highway, is a local action; and if there is no local description in the body of the declaration, the county in the margin must be taken as repeated in the declaration, and it is a material allegation. *Richardson v. Locklin*, 11 Jur. N. S. 951; 34 L. J. Q. B. 225.

[3] The court will not, as a general rule, grant an injunction against a nuisance which is temporary and occasional only. *Swaine v. Great Northern Railway*, 33 L. J. Ch. 399. *Cooke v. Forbes*, 5 L. R. Eq. 166; 37 L. T. 371. Smoke alone, noise alone, or offensive vapours alone, although not injurious to health, may severally constitute a nuisance, which a court of equity will restrain, if a court of law would give substantial damages. *Crump v. Lambert*, 3 L. R. Eq. 409. Plaintiff in equity having recovered judgment at law, with substantial damages for nuisance affecting his real estate, is entitled as of course to an injunction to restrain the nuisance until the hearing. *Tipping v. St. Helen's Smelting Company*, 1 L. R. Ch. 66. *Attorney-General v. Bradford Canal*, 2 L. R. Ex. 71. See *Luscombe v. Steer*, 15 W. R. 1191.

[4] Powers given by an act of parliament to do what can at that time be done without producing a nuisance, cannot be lawfully

IV. Remedies.

(B) *By Indictment, and Proceedings incident to.*[1]

NUN.[2]

O.

OATH.[3] *See* 6 Abr. 19. Administering abroad, 6 Geo. 4, c. 87; 18 & 19 Vic. c. 42. Abolition of, 5 & 6 Wm. 4, c. 62. On election of Municipal and Public Officers, *see* 29 & 30 id. c. 22. As to Parliamentary, *see* 29 & 30 id. c. 19, and 31 & 32 id. Promissory Oaths Act, 1868. In Criminal Proceedings, 24 & 25 id. 67; 26 & 27 id. 85. In Civil and Criminal, 32 & 33 id. c. 68.

OBSCENE Books, Sale of. 20 & 21 Vic. c. 83.

OFFENCES against the Person. 7 Wm. 4, and 1 Vic. c. 85; 14 & 15 id. c. 19.

OFFICE and Officer.[4] 6 Abr. 21. *See* also Army, Churchwarden, and Notice of Action.

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exercised, if afterwards it becomes impossible to exercise them without causing that result. *Reg. v. Bradford Navigation Company*, 11 Jur. N. S. 769; 34 L. J. Q. B. 191; 6 B. & A. 631. *R. v. Pease*, 4 B. & Ad. 30. Negligently blasting stone in a quarry, and thereby projecting large pieces of stone so as to endanger the safety of persons in houses and on the highways adjoining the quarry, is a misdemeanour indictable at common law. *Reg. v. Mutters*, 34 L. J. M. C. 22; 11 L. T. N. S. 386—C. C. R. A man may be convicted of a nuisance for exhibiting a disgusting and sickening picture in a public highway, although the object may be innocent, and there is nothing indecent or immoral in the exhibition. *Reg. v. Grey*, 4 B. & F. 73. A fire lighted by a wheelwright for the purposes of his business, within fifty feet of the centre of the highway, is not a public nuisance within the prohibition of the 72nd section of the Highway Act (5 & 6 Will. 4, c. 50). *Stinson*, App., *v. Browning*, Resp., 1 L. R. C. P. 321; 35 L. J. 204—C. P. A penalty is incurred under s. 2, 26 & 27 Vic. c. 17, by keeping diseased meat in a place for sale or preparation for sale. *Young v. Guttridge*, 3 L. J. N. 278.

[1] The owner of works carried on for his profit by his agents is liable to be indicted for a public nuisance caused by acts of his workmen in carrying on the works, though done by them without his knowledge, and contrary to his general orders. *Reg. v. Stephens*, 1 L. R. Q. B. 702; 12 Jur. N. S. 961; 35 L. J. M. C. 251; 14 W. R. 859; 14 L. T. N. S. 593. On the trial of an indictment for continuance of a nuisance, removed by certiorari and tried at the assizes, a plea of autrefois convict on a former indictment for the same nuisance not allowed to be added, even by consent, the judge having no jurisdiction to receive it. But the nuisance being condemned, the judgment on the former indictment is conclusive. *Reg. v. Maybury*, 4 F. & F. 90.

[2] A nun is not *civiliter mortua*, or incapable of holding property. *Metcalfe, In re*, 10 Jur. N. S. 224; 33 L. J. C. 308; 10 L. T. N. S. 13, 78.

[3] A reference to oath is a matter purely in the discretion of the court, and not of right. *Longworth v. Yelverton*, 2 L. R. H. L. 218. An affirmation taken under 3 & 4 Will. 4, c. 82, stated that the affirmant was a member of a religious sect called Separatists. It did not follow in terms the form of affirmation required by the statute, but it purported to have been made before an officer authorised to administer it:—*Held*, that it must be assumed to have been properly made. *Wolsely v. Worthington*, 13 Ir. Ch. R. 341. *M'Mahon v. Ellis*, 14 Ir. C. L. R. 492—C. P. Under 19 Geo. 2, c. 31, a conviction that "A. did, on the day of , profanely curse one profane curse," setting it out, "twenty several times repeated," and adjudging him to pay "for such his offence the penalty of 2*l.*" being a cumulative penalty at the rate of 2*s.* for each repetition, is good. *Reg. v. Scott*, 33 L. J. M. C. 15; 8 L. T. N. S. 662—Q.B. Using several oaths on one and the same occasion is one offence only; and 11 & 12 Vic. c. 43, s. 10, therefore, does not apply. *Ib.*

[4] The acts of a government officer bind the government only when he is acting in the discharge of a certain duty within the limits of his authority, or if he exceeds that authority, when the government ratifies the excess. 8 Moo. Ind. App. 520. The immemorial existence of fees of an office may be presumed from uninterrupted modern usage, unless there is some evidence

ORNAMENTAL Grounds. 26 & 27 Vic. c. 13.

OUTLAWRY.[1]

OVERSEERS. 6 Abr. 32.

I. Of the Appointment of.[2]

II. Of Assistant Overseers.[3]

III. Duties and Liabilities of Overseers.[4]

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given to the contrary. *Shephard v. Payne*, 16 C. B. N. S. 132; 10 Jur. N. S. 540; 33 L. J. C. P. 158; 10 L. T. N. S. 193—Ex. Ch. The modern usurpation of an excess does not affect the title to the original fees. *Ib.* A person validly elected to an office and admitted to it, cannot be removed from it without notice. *Reg. v. Saddlers' Company*, 10 H. L. Cas. 404.

[1] A plaintiff, who, thirty years ago, was made an outlaw, and the outlawry not reversed, sued the defendant in trespass. The defendant did not plead the outlawry, but at the trial applied for leave to plead it in abatement, which was refused. The plaintiff obtained a verdict, and afterwards signed judgment, and the defendant, on the fourth day of the following term, applied to set aside the judgment, on the ground that the plaintiff was an outlaw:—*Held*, too late; that the defendant should have pleaded the outlawry in abatement at the proper time. *Sowerby v. Wadsworth*, 33 L. J. Ex. 57; 2 H. & C. 701; 9 L. T. N. S. 416—Ex.

[2] By 29 & 30 Vic. c. 113, s. 10, no person shall be qualified to be appointed to be an overseer of the poor in any parish who at the time of the proposed appointment shall be an assistant overseer; and no person being an overseer of any parish shall be qualified to be appointed an assistant. By sect. 11, if it shall appear to the justices who are required to appoint overseers that two overseers cannot be conveniently appointed from the inhabitant householders in any parish, such justices may appoint one overseer only; and if it shall appear to them that there is no such householder liable to be appointed, they shall appoint some inhabitant householder of an adjoining parish, either with or without annual salary, which appointment shall endure until the usual time of the appointment of overseers, and may be renewed from year to year as long as the justices shall find necessary. By sect. 12, in any parish the same person may hold jointly the offices of churchwarden and overseer. Prior to this act the appointment of one overseer was void, the stat. 43 Eliz. c. 21, requiring two or more. *Reg. v. Cousins*, 4 B. & S. 849; 10 Jur. N. S. 722; 33 L. J. M. C. 87; 9 L. T. N. S. 686—Q. B. To bring a place within sects. 1 and 2 of 20 Vic. c. 19, which latter section enables justices to appoint one overseer only in extra-parochial places, it is not sufficient that such place shall have been entered by the Registrar General in his report on the last census as extra-parochial, if, in fact, such place is not extra-parochial, or reputed to be such. *Ib.* Overseers, in the 3 & 4 Wm. 4, c. 90, include churchwardens. *Reg. v. Rye (Justices)*, 13 W. R. 142; 10 L. T. N. S. 525—Q. B. Although the parish is divided, and each part has separate elected overseers, the division not being under 13 & 14 Car. 2, c. 12, or 59 Geo. 3, c. 134. *Ib.* A man cannot be a householder, within 43 Eliz. c. 2, s. 1, who has not an independent occupation. *Reg. v. Spurrell*, 3 L. R. Q. B. 72; 12 Jur. N. S. 208; 35 L. J. M. C. 74. The proper way of objecting to the appointment of an overseer, upon the ground that he is not a householder, is by appeal to the sessions. *Pudding Norton, Norfolk (Overseers), In re*, 33 L. J. Q. B. 136; 10 L. T. N. S. 386.

[3] In a notice of a vestry meeting to appoint an assistant overseer in pursuance of the 59 Geo. 3, c. 12, s. 7, it is not necessary to state that he is to be a salaried officer. *Reg. v. Salop (Justices)*, 11 L. T. N. S. 416—Q. B. Semble, an assistant overseer is not the servant of the churchwardens and overseers, but of the vestry, and he has power to sign a rate, unless by the terms of his appointment he is precluded. *Baker v. Locke*, C. P. 18; C. B. N. S. 52; 1 H. & P. 137; 34 L. J. C. P. 49. A poor-rate allowed by two magistrates was made by the majority of the parish officers, but such majority was obtained by an assistant overseer joining in making the rate. He had been appointed by the vestry to perform all the duties incident to the office of overseer, except the collection of rates:—*Held*, that this rate was so far presumably valid that its non-payment by a party claiming a borough franchise was a disqualification to his being on the register of voters. *Baker*, App., *Locke*, Resp. 18 C. B. N. S. 52; 1 H. & P. 137; 34 L. J. C. P. 49; 11 L. T. N. S. 567.

[4] It is the duty of the overseers of a parish, under section 21 of the Union Assessment Committee Act, 1862, to deposit the valuation list, after alteration by the assessment committee, in the place in which the rate-books are kept, and to give due notice

OYSTER. *See* Fish and Fisheries.

P.

PALACE ROYAL.[1]

PAPER BOOK.[2]

PARENT and Child. 6 Abr. 44. *See post*, Seduction.

I. Right to Custody and Education of Child.[3]

II. Liability of Father for Necessaries.[4]

III. Criminal Proceedings connected with.[5]

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thereof in the same manner as in the case of the original deposit. *R. v. the Overseers of Chorlton-on-Medlock*, 36 L. J. Q. B. 48; M. C. 56. 55 Geo. 3, c. 137, s. 6. This section is not repealed by the 4 & 5 Will. 4, c. 76, s. 77. The query in the marginal note to *Henderson v. Sherborne* (2 M. & W. 236) is wrong. *Robinson v. Emerson*, 12 Jur. N. S. 378—Ex. As to liability of succeeding overseers and pleadings connected with, see *Penfold v. West*, 9 L. T. N. S. 650.

[1] The law that a writ of *fi. fa.* cannot be executed against the goods of any person in a royal residence is a privilege attaching to the person of the crowned head, and not to the fact that the particular palace *had been* a royal residence. *Attorney-General v. Dakin*, 2 L. R. Ex. 290; 36 L. J. 157. Affirmed, Ex. Ch., by some of the judges on the ground that the case could not be substantially distinguished from *Winter v. Miles and the Earl of Strathmore v. Laking*, where the privilege was held to extend to Kensington and Holyrood palaces. *Attorney-General v. Dakin*, 57 L. J. Ex. 150.

[2] The only proper place for the delivery of paper books is the judges' chambers. *Howells v. Wynne*, 15 C. B. N. S. 11. Where one party has failed to deliver paper books, and the other has delivered paper books for himself, but not for the defaulting party, the cause will, if both parties have appeared, be struck out; but if the defaulting party has not appeared, the other party will be entitled to judgment. *Sanyhurst v. Haynes*, 13 W. R. 291.

[3] As a general rule, the father of a female child under the age of sixteen is entitled to her custody; and she is not of an age to exercise a discretion to withdraw herself therefrom. Persons detaining such a child from her father's protection, though with her consent, will therefore be ordered by *habeas corpus* to give her up to her father. *Reg. v. Howes*, 3 E. & E. 332; 30 L. J. M. C. 47. Where a husband has obtained a decree of dissolution, and has the custody of his child, and he is apparently leading a respectable life, and associating with respectable people, the court will view with great disfavour the employment of a detective to watch whether he visits a prostitute, for the purpose of inducing the court to deprive him of the custody of his child. *March v. March and Palumbo*, 2 L. R. P. & D. 437. To sustain an action for enticing away a servant, by which plaintiff lost the services, it is not necessary to prove a valid and binding contract of service. The service which the law implies of a daughter who assisted her father in his business held sufficient to sustain the action. *Evans v. Walton*, 2 L. R. C. P. 615; 36 L. J. 307.

[4] A wife living separate from her husband, and who has obtained the custody of their child under 2 & 3 Vic. c. 54, but is herself unable to support it, may pledge her husband's credit for reasonable expenses incurred by her in providing for the child. *Baseley v. Forder*, 39 L. J. Q. B. 237.

[5] By 31 & 32 Vic. c. 122, s. 37, when any parent shall wilfully neglect to provide adequate food, clothing, medical aid, or lodging for his child, being in his custody, under the age of fourteen years, whereby the health of such child shall have been or shall be likely to be seriously injured, he shall be guilty of an offence punishable on summary conviction, and being convicted thereof before any two justices shall be liable to be imprisoned for any period not exceeding six months, with or without hard labour; provided that such justices may suspend the sentence until further notice if the offender enter into recognisance to come up for judgment, and the guardians of the union shall institute the prosecution and pay the costs out of their funds. When from a conscientious religious conviction that God would heal the sick, and not from any intention to avoid the

PARISH and Extra-parochial Places.[1]

PARISH Books. *See* Evidence, vol. iv. p. 339; Marriage, vol. v. p. 443

PARISH Clerk.[2]

PARISH Property, Sale of. 5 & 6 Vic. c. 22; 11 & 12 id. 91.

PARLIAMENT.[3] 6 Abr. 48. *See* Election.

PARLIAMENTARY Agent. As to practising before tribunal appointed by 31 & 32 Vic. c. 125, s. 57, *see* Reg. Gen. 37 L. J. N. S. 7.

PAROCHIAL Assessment. 6 & 7 Wm. 4, c. 96; 25 & 26 Vic. c. 103.

Debts, payment of, 11 & 12 id. cc. 90, 114.

Offices, 24 & 25 id. c. 125.

Registry, 21 id. c. 25.

PAROL Evidence. 6 Abr. 58.

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performance of their duty, the parents refuse to call in medical aid, and the child dies, it is not culpable homicide. *Reg. v. Wagstaffe*, 10 Cox, C. C. 530. But a parent who wilfully withholds necessary food, with the wilful determination to cause the death, is guilty of murder if the child dies. *Reg. v. Conde*, 10 Cox, C. C. 547. In an indictment of a parent for neglecting to provide sustenance for his child, an averment that the prisoner "unlawfully and contrary to his said duty in that behalf, did omit, *neglect*, and refuse to provide," &c. is a sufficient averment of ability to support, and proof of ability having been given, conviction affirmed. *Reg. v. Ryland*, 1 L. R. C. C. R. 99; 37 L. J. M. C. 10; 17 L. T. 219.

[1] By 29 & 30 Vic. c. 113, sect. 18, "in all statutes, except there shall be something in the context inconsistent herewith, the word 'parish' shall signify a place for which a separate poor-rate is or can be made, or for which a separate overseer is or can be appointed." Where the boundary between two conterminous parishes in a highway, the presumption is that the half highway or either side of the *medium filum* belongs to the parish on that side. *Reg. v. Board of Works, Strand District*, 4 B. & S. 526; 33 L. J. M. C. 33. Where a parish extends up to a tidal river, but there is nothing to show whether it does or does not extend beyond the line of ordinary or medium high-water mark, land between such high-water and low-water mark cannot be assumed to be within the parish. *Bridgwater Trustees v. Bootle-cum-Linacre*, 2 L. R. Q. B. 4; 15 W. R. 169; 15 L. T. N. S. 351. And where the seashore forms the boundary of a parish, the portion of the shore between the high-water mark of ordinary spring tides and that of medium tides is within the limits of the parish. *Reg. v. Gee*, 1 El. & El. 1068. Where a parish comes down as far as the bank of a river, there is a *primâ facie* presumption that the parish extends as far as the middle of the river. *M'Cannon v. Sinclair*, 2 El. & El. 53. An action was brought to recover possession of premises in the occupation of A., to which the parish of B. claimed title. A vestry resolved that the action should be defended by an attorney, who defended it accordingly, and judgment was given for the plaintiff, but long after the parish officers who were in office at the time of the resolution had gone out of office. *Held*, that they were not liable to pay the costs. *Field v. Merrison*, 11 W. R. 473; 7 L. T. N. S. 754. If the owners of lands in an extra-parochial place have not chosen to annex the place to some parish under sect. 4 of the 20 Vic. c. 19, the Poor-Law Board may add the place as a parish to a poor-law union under 4 & 5 Will. 4, c. 76, s. 32, without the consent of the owners. *Reg. v. Boteler*, 32 L. J. M. C. 91; 8 L. T. N. S. 514. Staple Inn, an extra-parochial place never having had poor, has been duly united with the Holborn Union. *Staple Inn (Overseers) v. Holborn Union (Guardians)*, 9 Jur. N. S. 652; 32 L. J. M. C. 181; 8 L. T. N. S. 464—Ex. *Reg. v. Mytton*, 2 El. & El. 557.

[2] He has no power to assign his office. *Davis v. Nichols*, 38 L. J. C. P. 127.

[3] The fact that the court below has given leave to appeal will not make the appeal competent where it is excluded by statute. *North British Railway Company v. Wauchope*, 4 Macq. H. L. Cas. 352. The court of ultimate appeal will reluctantly overturn a series of decisions which have long regulated the settlement and devolution of property. *Young v. Robertson*, 4 Macq. H. L. Cas. 337. A respondent desired to contend

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PARTICULARS of Demand.[3] 6 Abr. 57.

PARSONAGE.

A Legacy to build a Parsonage-house is valid. *Sewell v. Crewe Read*, 36 L. J. Ch. p. 136.

PARTIES to Actions.[4] 6 Abr. 60.

that, in one respect, the decree of the court below was too favourable to the appellant, but as there was no cross-appeal, the house would not hear that point argued. *Kellett v. Kellett*, 3 L. R. H. L. 160. As to deducting costs from the costs awarded on the dismissal of an appeal, see *Conolly v. Luscomb*, 3 L. R. H. L. 139. The application to the taxing officer of the House of Commons, under 28 & 29 Vic. c. 27, s. 3, must be not until one month after the delivery of the bill of costs. *Williams v. the Neath and Brecon Railway Company and Proprietors of the Swansea Canal Navigation*, 37 L. J. Ex. 107. The provision in section 5 of the same act, that the validity of the taxing officer's certificate shall not be called in question, only applies to cases where a certificate has been given in conformity with the act. *Ib.*

[1] In order to construe a term in a written instrument, when it is used in a peculiar sense, differing from its ordinary meaning, evidence is admissible to prove the peculiar sense, differing from its ordinary meaning; evidence is admissible to prove the peculiar sense in which the parties understood the term, but not to contradict or vary what is plain. *Beacon Life and Fire Assurance Company v. Gibb*, 1 Moore, P.C.C. N.S. 73; 7 L.T. N.S. 574. The word "premises," although in popular language is applied to buildings, in legal language means the subject or thing previously expressed. *Ib. Macdonald v. Longbottom*, 1 El. & El. 977. See *Hills v. Evans*, 31 L.J. Chanc. 457 Extrinsic evidence is admissible to explain what is the subject-matter of a contract where the contract relates to some specific thing. *Chadwick v. Burnley (Mayor, &c.)*, 12 W. R. 1077—Q.B. *Raffles v. Wichelhaus*, 2 H. & C. 906; 33 L. J. Exch. 160. Where it does not contradict, but only supplement, the written contract is admissible. *Malpas v. London and South Western Railway Company*, 1 L. R. C. P. 336; 1 H. & R. 227; 35 L. J. C. P. 166; 13 L. T. N. S. 710. *Lindley v. Lacey*, 10 Jur. N. S. 1108; 34 L. J. C. P. 7; 13 W. R. 80; 10 L. T. N. S. 273. Where parol evidence has been improperly received to explain a supposed latent ambiguity in a written document the court will decide upon the construction of the instrument, without regard to the finding of the jury upon such evidence. *Bruff v. Conybeare*, 13 C. B. N. S. 263; 9 Jur. N. S. 78.

[2] The defendant, a shipowner, being desirous of chartering a vessel, the plaintiff, a shipbroker, introduced him to S., another broker, who introduced the defendant to L., who mentioned to B. that the charter was wanted, and through the negotiations of B. with the defendant, D. chartered the vessel. The plaintiff sued for commission, alleging that an "introducing broker" was entitled by custom to a share of the commission. The plaintiff's counsel proposed to ask a witness the following question, "What is the custom with regard to payment of broker's commission, when a broker introduces another broker to a shipowner, who subsequently negotiates with the broker introduced?"—*Held*, that the evidence was properly rejected. *Gibson v. Crick*, 1 H. & C. 142. Semble, that such a custom would be bad in law. *Ib. Allan v. Sundius*, 1 H. & C. 123. *Russian Steam Navigation Trading Company v. Silva*, 13 C. B. N. S. 610. *Falkner v. Earle*, or *Erle*, 3 B. & S. 360; 32 L. J. Q. B. 124; 7 L. T. N. S. 672. *Schreiber v. Horsley*, Ex. 11 Jur. N. S. 675. *Pentreguiny Fuel Company v. Young*, 12 Jur. N. S. 56—C. P.

[3] In an action on a policy, one of the questions was, whether the deceased had ever been afflicted with or had any symptoms of any complaint. The defendant having pleaded that this was untrue, as the deceased had had disease of the stomach, the court compelled the defendant to deliver to the plaintiff particulars of those symptoms. *Marshall v. Emperor Life Assurance Society*, 6 B. & S. 886; 1 L. R Q. B. 35; 35 L. J. Q. B. 80. To an action for calls on shares held by the defendant, he pleaded that he was induced to become the holder of the shares by fraud, and within a reasonable time after he had notice of the fraud, and before he had received any benefit from the contract, he repudiated it:—*Held*, that the plaintiff was entitled to particulars of the acts of fraud and repudiation. *M'Creight v. Stevens*, 1 H. & C. 454.

[4] To a declaration for a false representation, whereby the plaintiff was induced to pay 2000*l.* and "sustained great loss, and became and was adjudicated bankrupt, and suffered great personal annoyance, and was put to great trouble and inconvenience, and injured in character and credit," the defendant pleaded that before action the plaintiff had been adjudicated bankrupt, that the loss sustained was a pecuniary loss, and that the right to sue for it passed to his assignees:—*Held*, that the only damage recoverable

PARTITION.[1]

PARTNERSHIP.[2] 6 Abr. 65. See *ante*, Joint-Stock Company.

I. Creation of Partnership and Statutes relating to.

II. Partnership Property, p. 347.

III. Authority of One Partner to Bind the Firm, p. 347.

IV. Of Nominal, Dormant, and Retiring Partners, p. 347.

V. Death of Partner and Bankruptcy, p. 348.

VI. Stamp Duty, p. 348.

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was a direct pecuniary loss, the right to sue for which passed to the assignees. *Hodgson v. Sidney*, 1 L. R. Ex. 313; 35 L. J. 182—Ex.; 12 Jur. N. S. 694; 14 L. T. N. S. 624. An administrator cannot sue in his representative character upon contracts made after the death of the intestate, in the course of carrying on the intestate's business. The plaintiffs, husband and wife, sued the defendant for goods supplied to him by them in the course of carrying on the business of the wife's deceased father, whose administratrix the wife was:—*Held*, that the wife was wrongly joined as a party, and that the husband must sue alone. *Bolingbroke v. Kerr*, 1 L. R. Ex. 222; 35 L. J. 137—Ex.; 14 L. T. N. S. 365. By the Metropolitan Gas Act (23 & 24 Vic. c. 125, s. 56), the costs, charges, and expenses incident to the passing of the act, are to be paid by the Board of Works:—*Held*, that the parliamentary agent who had been employed to obtain the act could not sue the Board for his costs. *Whyatt v. Metropolitan Board of Works*, 31 L. J. C. P. 217; 11 C. B. 744. In covenant by tenants in common by reversioners at the time of the breach, all ought to join. *Thompson v. Hakewell*, 19 C. B. 713.

[1] 31 & 32 Vic. c. 40, amends the law in suits for partition, and confers on county courts jurisdiction in suits for partition where the property to which the suit relates does not exceed in value the sum of 500*l*. An infant being entitled to one-ninth of a real estate, and it being for her benefit, the court, instead of directing a partition, declared the costs a charge on the infant's share, and ordered a sale of the whole estate. *Davis v. Turvey*, 32 Beav. 554.

[2] The law of partnership is a branch of the law of agency, and the test of partnership is not simply whether the alleged partner was to receive a share of profits, but whether he constituted his alleged co-partners his agents for carrying on business. The receipt of profits is only important as a consequence of such agency. *English and Irish Church and University Assurance Society, In re*, 1 H. & M. 85; 8 L. T. N. S. 724. Hence where a person is sought to be made liable as a partner, the true test is, whether or not he has constituted the other alleged partner his agent in respect of the partnership business. *Bullen v. Sharp*, 1 H. & R. 117; 1 L. R. C. P. 86; 12 Jur. N. S. 247; 35 L. J. C. P. 105; 14 L. T. N. S. 72—Ex. Ch. 18 C. B. 614. A participation in the profits, though cogent, is not conclusive evidence of a partnership. *Ib.* The principal in a business who holds out an agent to the world as ostensible principal, and carries on the business under the management and in the name of such agent, is bound by all such acts and contracts as are incidental to the ordinary conduct of the business, and such liability cannot be restricted by any private arrangement between them. *Edmunds v. Bushell*, 35 L. J. Q. B. 20. *Rowland v. Crankshaw*, 1 L. R. Ch. Ap. 421. *Rishton v. Grissell*, 5 L. R. Eq. 326. A., B., and C. agreed that each should furnish 3000*l*. worth of goods, to be shipped on a joint adventure, the profits to be divided according to the amount of their several shipments:—*Held*, that this did not constitute a partnership between the three, so as to make B. and C. responsible for goods bought by A. to furnish his quota of the cargo. *Heap v. Dobson*, 15 C. B. N. S. 460. *Warner v. Smith*, 1 De G. J. & Sm. 337. A covenant by B. to admit a nominee of C. as a partner with him, will not of itself create a partnership between them. *Davis, ex parte, Harris, In re*, 9 Jur. N. S. 859; 32 L. J. Bank. 68; 8 L. T. N. S. 745—C. Where a partnership, originally carried on under articles for a fixed term of years, is continued after the expiration of the term without new articles being entered into, it becomes a partnership at will, and such only of the articles as are applicable to a partnership at will remain in force. *Clark v. Leach*, 9 Jur. N. S. 165, 610; 32 L. J. Ch. 290; 8 L. T. N. S. 40—C. *See Parsons v. Hayward*, 31 Beav. 199; 8 Jur. N. S. 924; 31 L. J. Ch. 666—C.

By 28 & 29 Vict. c. 86, reciting that it is expedient to amend the law relating to partnership, it is enacted as follows:—Sect 1. The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not of itself constitute

I. Partnership Property.[1]

II. Authority of One Partner to bind the Firm.[2]

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the lender a partner with the person or the persons carrying on such trade or undertaking, or render him responsible as such. By s. 2, no contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking, by a share of the profits of such trade or undertaking, shall of itself render such servant or agent responsible as a partner therein, or give him the rights of a partner. By s. 3, no person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of or to be subject to any liabilities incurred by such trader. By s. 4, no person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the goodwill of such business, shall, by reason only of such receipt, be deemed to be a partner of or be subject to the liabilities of the person carrying on such business. By s. 5, in the event of any such trader as aforesaid being adjudged a bankrupt, or taking the benefit of any act for the relief of insolvent debtors, or entering into an arrangement to pay his creditors less than 20*s.* in the pound, or, dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of his principal, or of the profits or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid until the claims of the other creditors of the said trader for valuable consideration, in money or money's worth, have been satisfied. By s. 6, in the construction of the act the word "person" shall include a partnership firm, a joint-stock company, and a corporation. A partnership of twenty persons for carrying on the business of farming, is within the Companies Act of 1862 (25 & 26 Vic. c. 89, s. 4), and if not registered under that act, is illegal. *Harris*, App., *Amery*, Resp., 1 H. & R. 358; 1 H. & P. 294; 1 L. R. C. P. 148; 12 Jur. N. S. 165; 35 L. J. C. P. 89.

[1] In the absence of any evidence, the presumption is, that partners are equally entitled to the profits, and equally liable to bear the losses of the business. *Collins v. Jackson*, 31 Beav. 645. *Wood v. Scoles*, 1 L. R. Ch. Ap. 369; 35 L. J. 547. *District Joint Stock Banking Company, Ex parte, in re Riches*, 11 Jur. N. S. 122; 34 L. J. Bank, 10; 11 L. T. N. S. 651, C. On the purchase by a surviving partner of the goodwill of a business, the goodwill should be valued on the footing that such surviving partner is entitled to set up the same description of business without purchasing. *Warner v. Smith*, 32 L. J. Chanc. 573; 7 L. T. N. S. 593. *Hall v. Burrows*, 10 Jur. N. S. 55; 33 L. J. Chanc. 204; 12 W. R. 322, C. When a partnership is formed, the trade-mark of one partner, in the absence of special stipulations, becomes part of the partnership property. *Bury v. Bedford*, 10 Jur. N. S. 503; 12 W. R. 727; 10 L. T. N. S. 470, L. J. As regards the power of one partner to bind another, a post-dated cheque cannot be distinguished from a bill of exchange; therefore where a partner had power to bind his firm by a cheque, but not by a bill of exchange, the other partner was held not liable on a post-dated cheque. *Forster v. Mackreth*, 2 L. R. Ex. 163; 36 L. J. 94.

[2] In an action by indorsee against members of a firm on a bill accepted in the name of the firm, upon its being proved that the acceptance was by one of the partners in fraud of the partnership and contrary to the partnership articles, the onus is cast on the holder of the bill of showing that he gave value. *Hogg v. Skeen*, 18 C. B. N. S. 426; 11 Jur. N. S. 244; 34 L. J. C. P. 153; 13 W. R. 383; 12 L. T. N. S. 709. There is no case which decides that the plaintiff cannot recover to the extent of the partnership debt. *Ellston v. Deacon*, 2 L. R. C. P. 20. One who takes from a member of a trading firm, in satisfaction of his separate debt, a negotiable security, is bound to show that it was accepted or indorsed with the concurrence of the other partners. *Leverson v. Lane*, 13 C. B. N. S. 278; 9 Jur. N. S. 670. A bill accepted in the name of a firm, in the hands of a *bonâ fide* holder, is valid against the firm, although the partner who accepted had no authority to do so, and his doing so was fraudulent. *Wiseman v. Easton*, 8 L. T. N. S. 637. A firm was newly constituted, but no alteration was made in the mode of carrying on the business; the accounts were continued in the old books, and the existing liabilities were discharged or diminished either from the assets of the old firm, or from the funds of the new:—*Held*, cogent evidence that the new firm had assumed the liability to pay the debts of the old. *Bank of Australasia v. Flower*, 1 L. R. P. C. 27; 35 L. J. P. C. 13.

[3] The test whether a person who is not an ostensible partner in a trade is, nevertheless, in contemplation of law a partner, is not whether he is entitled to participate in the profits, although this affords cogent, often conclusive evidence of it, but whether the trade has been carried on by persons acting on his behalf. *Kilshaw v. Jukes*, 3 B. & S. 847. Where a member of a firm which is under a continuing contract retires with an indemnity, the continuing partners are his agents for carrying on the contract. *Oakford v. European and American Shipping*

IV. Death of Partner and Banrkuptcy.[1]

V. Stamp Duty.[2]

PASSENGERS by Sea. 15 & 16 Vic. c. 44, 16 & 17 id. c. 84.

PARTY-WALLS.[3] 6 Abr. 79.

PATENTS for Inventions. 6 Abr. 78; Statutes 21 Jac. 1, c. 3, s. 6; 5 & 6 Wm. 4, c. 83; 2 & 3 Vic. c. 67; 7 & 8 id. c. 69; 15 & 16 id. c. 83; 16 & 17 id. c. 115.

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I. User by Crown not excluded by, and of Caveats against Grant.[4]

Company, 1 H. & M. 182; 9 L. T. N. S. 15.

[1] A solvent partner will not be allowed to prove against the estate of a bankrupt partner so long as there are joint debts unpaid, although the joint estate may show sufficient to pay the joint debts, and the fact that the debt was incurred after the dissolution of the partnership will make no difference. *Ex parte Bass, in re Motion*, 36 L. J. Bank. 39.

[2] By an indenture reciting that a dissolution of partnership been two partners had taken place, and the share of the retiring partner in the assets of the firm had been found to be a certain specified sum, and an arrangement had been made, by which a portion of that sum was to be paid, and the remainder secured by a mortgage of the partnership assets, the retiring partner conveyed to the continuing partner all his interest in the partnership assets:—*Held*, a conveyance upon a sale within the meaning of 13 & 14 Vic. c. 97, Schedule, tit. "Conveyance." *Christie v. The Commissioners of Inland Revenue*, 36 L. J. Ex. 11. *Ad val.* stamp duty held to be payable on a deed by which a partner retired from the partnership, and conveyed the real assets to the continuing partners, although the consideration was expressed to be part of the partnership assets. *Phillips v. Commissioners of Inland Revenue*, 2 L. R. Ex. 399; 36 L. J. 199.

[3] A tenant who has been compelled by the "building owner" to pay the proportion of the expenses of a party-wall payable (under the Metropolitan Building Act, 1855), by his landlord, the "adjoining owner," may maintain an action against the latter to recover the sum so paid; and he is not bound to deduct it from rent due or accruing due. *Earle v. Maugham*, 14 Com. B. Rep. N. S. 626. The power given to a building owner to raise a party-wall, "making good all damage occasioned thereby," does not empower him to interfere with an easement of the adjoining owner (in this case, light to an ancient window). *Crofts v. Haldane*, 2 L. R. Q. B. 194; 36 L. J. 85.

[4] A grant of letters-patent to a subject for an invention does not exclude the crown from using the invention without the license of the patentee. *Feathers v. Reg.* 6 R. & S, 25; 135 L. J. Q. B. 206; 12 L. T. N. S. 114—Q. B. The crown is not responsible, by way of petition of right, for an infringement of a patent by the Lords of the

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III. For what Term Granted, and Prolongations.[2]

Admiralty, but the remedy is by action against the wrong doers. *Ib.* No caveat against the sealing of letters-patent can in future be entered without the express leave of the Lord Chancellor. *Heathorn's Patent, In re*, 10 Jur. N. S. 810; 10 L. T. N. S. 802.

[1] It is not every useful discovery that can be made the subject of a patent. It must be shown that the discovery can be brought within a fair extension of the words "a new manufacture." *Ralston v. Smith*, 11 H. L. Cas. 223; 35 L. J. C. P. 49. When a thing has once been used for a certain purpose, no patent is valid for applying that thing to a similar but not an identical purpose. *Jordan v. Moore*, 1 L. R. C. P. 624; 12 Jur. N. S. 766; 35 L. J. C. P. 268; 14 W. R. 769. The application of a known article to a purpose analogous to that to which it had before been applied, is not the subject of a patent, although the result of the application may be the production in a cheaper and better manner of a known article. *Horton v. Mabon*, 16 C. B. N. S. 141; 12 W. R. 491; 9 L. T. N. S. 815—Ex. Ch. Where there are two things similar in form used for a similar object, and capable of the same application, one of them having been known to mechanics, the introduction of the other into use will not constitute a good ground for a patent. *Harwood v. Great Northern Railway Company*, 11 H. L. Cas. 654; 35 L. J. Q. B. 27. Where a patent is granted to two or more jointly, each of the patentees has a right to manufacture the patent article, irrespective of the other. *Mathers v. Green*, 1 L. R. Ch. Ap. 29. The principle laid down in *Brooke v. Aston*, 4 Jur. N. S. 279; 5 id. 1025, that the mere application of a known process to a new article, the mode of application not being new, is not a good subject of a patent, does not apply where the process is chemical. The rule which protects a patentee against the use by others of mechanical equivalents, is inapplicable to a case where the whole invention depends entirely on the particular machinery by means of which a well-known object is attained. *Curtis v. Platt*, 36 L. J. Ch. 852. An old mode of operation, more extensively than hitherto applied to a well-known article, does not afford a ground on which to grant a patent. *Ormsen v. Clark*, 13 C. B. N. S. 337; 9 Jur. N. S. 749. Affirmed, 14 C. B. N. S. 475; 32 L. J. C. P. 291; 11 W. R. 787—Ex. Ch. *Jordan v. Moore*, 1 L. R. C. P. 624; 35 L. J. C. P. 268. The invention or discovery of a means of producing in abundance, suitable for economical and commercial purposes, an article previously known and obtainable in minute quantities only, is a good subject of a patent. *Young v. Fernie*, 10 Jur. N. S. 926; 12 W. R. 901; 10 L. T. N. S. 861. Where there are two patents, and it is apparent that the earlier patent only stated a principle, and that the latter patent did not claim the discovery of the principle, but only a new mode of carrying it into effect, is valid. *Betts v. Menzies*, 10 H. L. Cas. 117. *Jordan v. Moore*, 1 L. R. C. P. 624; 35 L. J. C. P. 268. An invention was described in a book published in France, copies of which were sent to England for sale:—*Held*, that this was a publication of the invention, and that no valid patent could afterwards be taken out for the same invention. *Laing v. Gisborne*, 31 Beav. 133.

[2] The fact that for fourteen years a patent has not been brought into use raises a very strong presumption against its utility, and this presumption can only be rebutted by the very strongest evidence. *In re Allen's Patent*, 1 L. R. P. C. 507. *In re Herbert's Patent*, id. Sect. 25, 15 & 16 Vic. c. 83, terminating an English patent upon the termination of a foreign one for the same purpose, only applies to a patent which has been taken out here after the foreign patent has been granted. *In re Poole's Patent*, 1 L. R. P. C. 514. The grounds upon which the Privy Council will recommend an extension of the term of letters-patent have reference to the inventor himself. *Norton's Patent, In re, ex parte Salt*, 9 Jur. N. S. 419. Therefore, where it appeared that the petitioner was the assignee of a patent granted for fourteen years, and that he had formed a company for the purpose of working the patent, and not for a purpose, by means of which any benefit could accrue to the original inventor, who had parted with all interest in the patent, the committee refused to grant a prolongation. The Privy Council will not try the validity of a patent, nor recommend an extension of the term, where the patent is manifestly bad; nor will they generally enter into questions of doubtful validity. *Hill's Patent, In re*, 9 Jur. N. S. 1209; 9 L. T. N. S. 101—P. C. If it can be clearly shown that the patent sought to be extended is bad for want of originality, the Privy Council will not entertain the application. *Betts' Patent, In re*, 1 Moore, P. C. C. N. S. 49; 9 Jur. N. S. 137; 11 W. R. 221; 7 L. T. N. S. 577. The account of profit and loss of the patentee in working a patent ought to be clear and precise. *Ib.* If a patentee is also manufacturer of his patent article, in taking account of the profits of the patent, he is entitled to deduct his profits as a manufacturer. *Ib. In re Trotman's Patent*, 1 L. R. App. P. C. 118. In considering the profits, the court will only look at those made in this country, not at profits made in a foreign country. *In re Poole's Patent*, 1 L. R. P. C. 514. A patent (a communication from a foreigner abroad) was taken out in England, and the inventor a few weeks afterwards ob-

tained letters-patent for the invention in America. An application was made for a prolongation of the English patent before the American patent had expired:—*Held*, that the case fell within the spirit of the provisions of sec. 25 of the 15 & 16 Vic. c. 83, and the application was refused. *Newton's Patent, In re*, 15 Moore, P. C. C. 176; 9 Jur. N. S. 109. *See Betts' Patent, In re*, 1 Moore, P. C. C. N. S. 49; 9 Jur. N. S. 137; 11 W. R. 221; 7 L. T. N. S. 577. Where a patent is taken out in a foreign country before a patent for the invention in the United Kingdom, the latter patent is to terminate at the same time as the foreign patent. *Ib.* The power given by 7 & 8 Vic. c. 69, s. 2, to recommend an extension of the term of letters-patent for an invention, is exhausted when an extension has been once recommended. *Goucher's Patent, In re*, 2 Moore, P. C. C. N. S. 532.

[1] A patent, when the specification is insufficient, is void. *Foxwell v. Bostock*, 10 L. T. N. S. 144. But a patentee may in his complete specification omit a part of the provisional specification without vitiating his patent; and he may also, by disclaimer, disclaim all the claiming clauses in the complete specification without vitiating his patent, if in the body of the specification there is a sufficiently clear description of what the patentee claims. *Thomas v. Welch*, 1 L. R. C. P. 192; 35 L. J. C. P. 200. An alteration, verbal merely and not substantive, by means of a disclaimer, will not make a patent void. *Ib.* The generality of the provisional specification is no ground for avoiding the patent after it has been granted; it is only a ground for the law officer to order it to be amended. When it is said that the complete specification must agree with the provisional specification, it is only meant that it must contain nothing at variance with the provisional specification. *Penn v. Bibby*, 1 L. R. Ch. Ap. 127. In construing a specification, it is not competent to an inventor to pray in aid the provisional specification, in order to explain or enlarge the meaning of the complete specification. *Mackelcan v. Rennie*, 13 C. B. N. S. 52. An antecedent specification, declaring a principle, but not disclosing a practicable mode of obtaining a result, is not to be held to be an anticipation of a subsequent specification relating to the same matter, which does disclose a practicable mode of producing the result. If the latter specification alone supplies that practicable mode, it forms the groundwork for a valid patent. *Betts v. Menzies*, 10 H. L. Cas. 117; 9 Jur. N. S. 29. The description, "a roller of hard metal or other suitable material," is not too uncertain, on account of the use of the words "or other suitable material." *Ralston v. Smith*, 11 H. L. Cas. 223; 35 L. J. C. P. 49. *Newall v. Elliott*, 10 Jur. N. S. 954; 13 W. R. 11; 10 L. T. N. S. 792—Exch. Where a patented invention is partly original and partly communicated from a foreign country:—*Semble*, that the part communicated from the foreign country should be defined in the patent and in the specification, which should particularise what is new in the invention, and what is old. *Renard v. Levinstein*, 10 L. T. N. S. 117.

[2] A disclaimer cannot be used for the purpose of converting a barren and an unprofitable generality in a specification into a specific practical description, or to convert that which, upon the description in the specification, is not applicable to any one definite form into a description applicable to a specific and definite mode of proceeding. *Ralston v. Smith*, 11 H. L. Cas. 223; 35 L. J. C. P. 49.

[3] A exclusive licensee of a patent has a right to use the name of the patentee to restrain any infringement of the patent. *Renard v. Levinstein*, 2 H. & M. 628. *Henderson v. The Mostyn Copper Company*, 3 L. R. C. P. 202. A license to A. to manufacture a patent article is an authority to his vendees to vend it without the consent of the patentee. *Thomas v. Hunt*, 17 C. B. N. S. 183. A licensee is estopped from disputing its validity during the continuance of the license. *Crossley v. Dixon*, 9 Jur. N. S. 607; 32 L. J. Chanc. 617; 11 W. R. 716; 8 L. T. N. S. 260; 10 H. L. Cas. 293. One who makes a patent article under a license cannot, in an action against him for royalties, set up any objection to the novelty or utility of the invention, or the validity of the specification. *Trotman v. Wood*, 16 C. B. N. S. 479. *Crossley v. Dixon*, 9 Jur. N. S. 607; 32 L. J. Chanc. 617; 11 W. R. 716; 8 L. T. N. S. 260; 10 H. L. Cas. 293. The executors of a patentee having obtained probate of their testator's will, assigned his patent to another person, but the probate was not registered under 15 & 16 Vic. c. 83, till after the assignment:—*Held*, that the assignment was valid. *Ellwood v. Christy*, 10 Jur. N. S. 1079; 13 W. R. 54; 11 L. T. N. S. 342—C. P. Although, by 7 & 8 Vic. c. 69, s. 4, the assignee of a patentee is entitled to apply for an extension of letters-patent, yet he does not, unless under peculiar circumstances, stand on the same favourable footing as the original inventor. *Norton's Patent, In re*, 1 Moore, P. C. C. N. S. 339. The jury, in an action for non-payment of royalties, and for an account, found that T. was entitled at all events to an account of the patent. *Trotman v. Wood*, 16 C. B. N. S. 479.

VII. Infringement of Patent.

(A) *What is.*[1]

(B) *Action for.*

(*a*) *Particulars.*[2] *See* 15 & 16 Vic. c. 83, s. 41.

(*b*) *Pleadings in.*[3] (*c*) *Evidence and Damages.*[4]

(C) *By Injunction,*[5] *&c.*

(D) *Costs.*[6]

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[1] Where a patent is for a combination, a person who takes a new and material part of the combination, but does not apply it to a similar purpose to that for which it was applied in the patented combination, does not infringe the patent. *Lister v. Eastwood*, 9 L. T. N. S. 766—C. P. Ignorance of the existence of a former invention is no answer to a charge of infringement. *Curtis v. Platt*, 11 L. T. N. S. 245. The directors of a company are personally responsible for the infringement of a patent by their workmen, notwithstanding such infringement may be in contravention of orders. *Betts v. De Vitre*, 37 L. J. Ch. 325; 3 L. R. C. 429; 18 L. T. N. S. 165. As to suspending license for use, *see Henderson v. Mostyn Copper Company*, 3 L. R. C. P. 202.

[2] This section enacts that no evidence shall be allowed to be given in support of any alleged infringement which shall not be contained in the particulars delivered, applies to suits in equity. *Curtis v. Platt*, 36 L. J. Ch. 852. Particulars of breaches delivered with a view to a trial of a patent case in Chancery are sufficient if taken together with the pleadings; they give the defendant fair notice of the case to be made against him. *Needham v. Oxley*, 1 H. & M. 248; 9 Jur. N. S. 598; 8 L. T. N. S. 532. *Curtis v. Platt*, 8 L. T. N. S. 657. *Penn v. Bibby*, 1 L. R. Eq. 548. *Bovill v. Goodier*, 36 L. J. Ch. 360. Particulars of objection to a patent on the ground of prior user disallowed, as being too general, and further particulars ordered. *Morgan v. Fuller*, 2 L. R. Eq. 227.

[3] In an action for infringement, a plea that he was not the first and true inventor; that on another charge by the plaintiff for an infringement of the same patent, the question by consent was referred, and the arbitrator found that the patent was not illegal and void:—*Held*, that the plea showed an estoppel. *Newhall v. Elliott*, 9 Jur. N. S. 359; 32 L. J. Exch. 120. The court will not allow a plea to be filed to a claim for a writ of injunction. *Non constat* that the injunction will ever be asked, but if asked, the merits can be brought forward by affidavit. *Booth v. Taylor*, 1 L. R. Ex. 51. The grant of letters-patent by a foreign country is an act of state, within the meaning of 14 & 15 Vic. c. 99, s. 7, and is therefore provable by a copy of the letters-patent, purporting to be sealed with the seal of such foreign state, without further proof. *Betts' Patent, In re*, 1 Moore, P. C. C. 49; 7 L. T. N. S. 577; 32 L. J. Q. B. 126; 11 W. R. 433.

[4] In a patent infringement case, where issues are tried before the court, and the affirmative of an issue is substantially upon the defendant, as on the issue of *novelty*, the plaintiff has a right to produce evidence in reply to rebut that of the defendant. And the defendant will not be allowed, after such evidence in reply, and his summing up, to produce evidence in corroboration of his evidence in chief, and to contradict plaintiff's evidence in reply. *Penn v. Jack*, 2 L. R. Eq. 314. *Hyde v. Palmer*, 3 B. & S. 657. Where the patentee had not been a manufacturer of his own patent, but a licensed manufacturer at a stated royalty, he is not entitled as against infringers to manufacturer's profits, but only to the royalties as charged to licensees. *Penn v. Jack*, 5 L. R. Eq. 81; 16 W. R. 243; 17 L. T. 407. In an action for the breach of an agreement to pay the stamp duty on letters-patent, whereby they became void, and the plaintiff lost the profits thereof, the court refused to allow the defendant to administer interrogatories to the plaintiff for the purpose of showing that the letters-patent were of no value. *Jourdain v. Palmer*, 4 H. & C. 171.

[5] Although it is the ordinary rule of the court not to grant an injunction unless the validity of a patent has been established, or the patent has been undisputed for many years, the circumstances may be such as to induce the court to depart from that rule. *Renard v. Levinstein*, 10 L. T. N. S. 94, 177—L. J. *Bovill v. Goodier*, 2 L. R. Eq. 155; 35 L. J. 432. A defendant in a suit to restrain an infringement of a patent is entitled to dispute the validity of the patent, although the plaintiff has obtained a judgment at law against another person establishing its validity. *Bovill v. Goodier*, 2 L. R. Eq. 195; 12 Jur. N. S. 404; 35 L. J. Chanc. 432—R. Courts of equity have now jurisdiction to try issues of fact affecting a legal right. It is a matter for the discretion of the judge as to having a jury. *Bovill v. Hitchcock*, 3 L. R. Ch. 417; 37 L. J. 223.

[6] A patentee is entitled to full costs, at the discretion of the judge, under 15 & 16 Vic. c. 83, s. 43, in any suit to protect his rights, although the validity of his patent is not disputed, and has, in fact, been established in prior suits. *Davenport v. Rylands*, 1 L. R. Eq. 302; 35 L. J. Chanc. 204; 14 L. T. N. S. 53. As to costs of discontinuance, *Curtis v. Platt*, 10 Jur. N. S. 823; 33 L. J. C. P.

PAUPER. 6 Abr. 110. *See* Poor; Settlement and Removal.

Suing in Forma Pauperis.[1]

PAWNBROKER.[2] 6 Abr. 112. *See* Bailment.

PAYMENT.[3] 6 Ab. 117. *See* Accord and Satisfaction.

PAYMENT into Court.[4] 6 Abr. 119.

255; 10 L. T. N. S. 383. As to judge's certificate, *Bovill v. Hadley*, 17 C. B. N. S. 435; 10 L. T. N. S. 659.

[1] Where a plaintiff sues *in formâ pauperis*, and obtains a verdict and the judge's certificate for costs, whatever be the amount recovered, nothing is to be allowed on taxation of costs in respect of fees to counsel, or for the services of the plaintiff's attorney. *Dooley v. Great Northern Railway*, 2 El. & El. 576. A pauper without known relations, and chargeable to a union, died entitled to money in a provident society. The court granted administration to the guardians of the union as creditors. *Cleaver v. The next of Kin of McKenna*, 35 L. J. P. & M. 91.

[2] Goods pledged with a pawnbroker were lost through a burglary on his premises. The owner laid a complaint before justices against the pawnbroker for refusing, without reasonable cause, to deliver up the goods upon tender of the proper amount. The justices made an order that he, not having shown reasonable cause to the contrary, should deliver up the goods, or, in default, compensate the owner:—*Held*, that the order was bad; s. 14, of 39 & 40 Geo. 4, c. 99, under which the order was made, applying only to cases of wilful refusal to deliver up goods actually in his possession; and that the order should have been under s. 24, which empowers them to award compensation where goods are lost through the default, neglect, or wilful misbehaviour of the pawnbroker. *Shackell v. West*, 2 El. & El. 326. Goods deposited with a pawnbroker in the way of his trade are privileged from distress; and this, though they may have been pledged more than twelve months. *Swire v. Leach*, 18 C. B. N. S. 479; 11 Jur. N. S. 179; 34 L. J. C. P. 150; 11 L. T. N. S. 680. If they are distrained, the pawnbroker is entitled to recover their full value from the landlord, and not merely the amount which he has advanced on them. *Id.*

[3] A plea of payment of a smaller sum, in satisfaction of a larger, after action brought, not stating that it was in satisfaction of damages (for the retention of the debt), must be taken as a plea to the whole cause of action, and is therefore bad. *Ash v. Pouppeille*, 3 L. R. Q. B. 86; 37 L. J. 55. As to a special plea of payment, see *Page v. Meek*, 3 B. & S. 259; 9 Jur. N. S. 352; 32 L. J. Q. B. 4; 7 L. T. N. S. 270. A., the commission-agent of plaintiff, sold a quantity of plaintiff's yarn to defendant, and on the delivery of a portion received payment in cash. After that A. asked defendant for a loan of 1000*l.*, which he refused, but agreed to advance it for the purchase at an agreed price of yarns, to be subsequently delivered. A. delivered yarns of another seller, and, upon delivery of the residue of plaintiff's yarns, the defendant setting off in account the balance remaining due of the 1000*l.* and interest, paid A. the difference. A. became bankrupt:—*Held*, the set-off was not a payment as against the plaintiff; and the fact that A. sold on a *del credere* commission made no difference. *Catterall v. Hindle*, 1 L. R. C. P. 186; 35 L. J. C. P. 161. The plaintiff's attorney wrote to the defendant, requesting him to remit a balance due to the plaintiff, with 13*s.* 4*d.* costs. The defendant sent a bank bill for the amount of the balance only. The plaintiff's attorney wrote in answer that he would not receive the bank bill unless the 13*s.* 4*d.* was paid, but did not return it. The jury having found that any objection to the remittance not being in money was waived, and that the bank bill was only refused because it did not include the costs:—*Held*, that there was evidence of payment. *Caine v. Coulton*, 1 H. & C. 764; 11 W. R. 239; 32 L. J. Ex. 97. A plea to an action by the principal for goods sold, that they were sold by D. as apparent principal, and bought by defendant from him as such, and on D.'s own account and without notice that he was agent merely, and that defendant paid D. before notice that he was agent, is a bad plea. *Drakeford v. Piercy*, 14 L. T. N. S. 403—Q. B. *See* Principal and Agent. Sale of goods by A. to B., "payment within ten days, by cash or by approved banker's bill." An "approved" banker's bill, B. & Co. on a London bank, was accordingly handed to A. by the agent of B., who had received cash from B. B. was not required to indorse the bill. A. indorsed it away, after which B. & Co., the drawers, stopped payment, and on being presented for acceptance it was refused:—*Held*, that A. was not entitled to recover from B. the price of the goods. *Smith v. Mercer*, 3 L. R. C. P. 24; 17 L. T. 317. See *Hopkins v. Ware*, 38 L. J. Ex. 147.

[4] Where, in an action of trespass by one tenant in common against another, the declaration alleges a destruction of, and expulsion from, the entire common property, the defendant may pay money into court in respect of the damage to the plaintiff's share, and as to the residue, plead *liberum*

PEDLAR Licenses. *See* 28 & 29 Vic. c. 96.

PEDIGREE.[1] 6 Abr. 122.

PEER. 6 id.

PENAL Statutes. Id. *See* Statutes, Actions on.

PENALTY.[2] 6 Abr. 122. *See* Liquidated Damages.

PENDENCY of Suit. *See* Abatement, 1 Abr. p. 23.

PERFORMANCE. *See* Bond, 2 Abr. p. 504; Condition, 3 id. pp. 170, 171, 172; Covenant, *id.* p. 521.

PERJURY. 6 Abr. 122.

I. Of the Requisites to Constitute, and Jurisdiction of Courts.[3]

II. Indictment, Evidence, and Trial.[4]

PERPETUATING Testimony. 24 & 25 Vic. c. 134, s. 88; 30 & 31 *id.* c. 35, s. 6.

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tenementum, and that it was not his. *Cresswell v. Hedges*, 1 H. & C. 421. Where money was paid into court to abide the event of a suit by a defendant, who afterwards became bankrupt:—*Held*, that the plaintiff, who subsequently to the bankruptcy obtained a verdict, was not "a creditor having security for his debt," within 12 & 13 Vic. c. 106, s. 184, and was therefore entitled to the money as against the assignees. *Murray v. Arnold*, 3 B. & S. 287; 9 Jur. N. S. 461. The court, to prevent injustice, may control and direct the application of money paid into court. *Carr v. Royal Ex. Assurance*, 11 Jur. N. S. 265; 34 L. J. Q. B. 21; 11 L. T. N. S. 595.

[1] In matters of pedigree, entries in a family Bible, coming out of the proper custody, are evidence, without proof of handwriting. *Hubbard v. Lees*, 1 L. R. Ex. 255; 35 L. J. 169. On an issue whether the plaintiff was the natural son of H. C., declarations of J. C., brother of H. C., were tendered as evidence of the relationship between the plaintiff and H. C.:—*Held*, that such declarations did not fall within the exception which admits declarations of members of the family in cases of pedigree. *Crispin v. Doglioni*, 3 S. & T. 44; 33 L. J. Prob. 109; 8 L. T. N. S. 91.

[2] *See Hinton v. Sparkes*, 37 L. J. C. P. 81; 3 L. R. C. P. 161.

[3] Wilful and corrupt false swearing before a local marine board, duly constituted under 17 & 18 Vic. c. 104, upon a matter material to an inquiry then lawfully investigated by them, under 25 & 26 Vic. c. 63, s. 23, is perjury. *R. v. Tomlinson*, 37 L. J. M. C. 41. *Reg. v. Heane*, 9 Cox, C. C. 433; 10 Jur. N. S. 724; 9 L. T. N. S. 719,—Q. B. A county-court judge having decided on a plaint, was considering by what instalments it should be paid; and on asking defendant, who was sworn, his name, he said, "Edward," and not "Bernard Edward," by which he was sued. The judge then struck out the cause. The defendant was convicted of perjury:—*Held*, the conviction was good. *Reg. v. Mullany*, 34 L. J. N. S. M. C. 111. So when the evidence was immaterial, except as tending to render more credible the witnesses' evidence on the material issue. *Reg. v. Tyson*, 1 L. R. C. C. R. 107; 37 L. J. M. C. 7; 17 L. T. 292. So for perjury in giving false evidence on the hearing of a summons before justices, although there had been no written information taken, before issuing the summons, sustained. *Reg. v. Shaw*, 34 L. J. N. S. M. C. 169.

[4] On an indictment for perjury, alleged to have been committed on the trial of an indictment for an assault, all the evidence admissible on the trial for the assault is admissible on the trial of the indictment for perjury. *Reg. v. Harrison*, 9 Cox, C. C. 503. An indictment for making a false declaration under 5 & 6 Wm. 4, c. 62, s. 18, cannot be sustained when the deed or written instrument of which the declaration is confirmatory is not duly proved. *Reg. v. Cox*, 4 F. & F. 42. Upon an indictment for perjury on the hearing of an information for bastardy, alleged the application for a summons, the issuing thereof, and the hearing upon it, proof of the information, of the appearance of the defendant, of the hearing, of evidence being given on both sides, the want of a summons is sufficient to show jurisdiction in the justices who heard the information, without proof of the summons which issued upon that information. *Reg. v. Smith*, 37 L. J. M. C. 6. The affidavit required under 9 Geo. 4, c. 23, s. 7, may be made before a commissioner to administer

PERSONAL Inspection of Persons injured; its application to Railway Companies, 31 & 32 Vic. c. 26.

PETITIONS of Right.[1] 6 Abr. 128.

PETROLEUM. Regulations as to its Safe Keeping, *see* 25 & 26 Vic. c. 76.

PETTY Average. 6 Abr. 128. *See* Average.

PEW.[2] 6 Abr. 128.

PIGS.[3]

PHYSICIANS. 6 Abr. 131. *See* Medical Practitioners.

PIGEONS, Unlawfully Killing.[4]

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oaths in Chancery. The former statute is not repealed in this respect by the latter, which allows the affidavit to be made before a justice of the peace also. *Reg. v. Greenland*, 1 L. R. C. C. R. 65; 36 L. J. M. C. 37. Upon an indictment for perjury in falsely swearing on a former trial that there was no draft of a statutory declaration, the materiality of the existence of such draft turned upon its contents and the fact of certain alterations having been made in it. Parol evidence of the fact, or the existence of its contents, without notice to produce the draft, is inadmissible. *R. v. Elworthy*, 37 L. J. M. C. 3. An unmarried woman having recovered judgment in a county court against A., obtained a judgment summons against him from the Sheriff's Court, London. At the hearing, it having been ascertained that the plaintiff had married in the meantime, the judge amended the title of the cause by inserting the husband's name: — *Held*, that he had no power to do so, and an indictment for perjury could not be maintained. *Reg. v. Pearce*, 3 B. & S. 531. On an indictment for perjury, as having been committed on the hearing of a complaint before L. & G., justices in and for the county of D., acting in and for the borough of T., in the said county: — *Held*, the judge had power to amend the indictment by striking out "in and for the county of D." *Reg. v. Western*, 1 L. R. C. C. R. 122; 37 L. J. M. C. 81; 18 L. T. 299.

[1] A petition of right will not lie to recover compensation for a wrongful act done by a servant of the crown in the supposed performance of his duty. *Tobin v. Reg.* 16 C. B. N. S. 310; 10 Jur. N. S. 1029; 33 L. J. C. P. 83; 10 L. T. N. S. 762. Nor to recover unliquidated damages for a tort. *Ib.* Or against the crown in respect of the infringement of a patent right by the Admiralty. *Feather v. Reg.* 6 B. & S. 257; 35 L. J. Q. B. 200; 12 L. T. N. S. 114. The crown may plead and demur, or plead double, to a petition of right, under 23 & 24 Vic. c. 34, without leave of a judge. *Tobin v. Reg.* 14 C. B. N. S. 505; 9 Jur. N. S. 1130; 32 L. J. C. P. 216; 8 L. T. N. S. 392, 730. In an action against a Secretary of State for not submitting to the Sovereign a petition of right, it appeared that he had submitted the petition to her majesty, and had her advice, that her fiat should not be granted: —*Held*, that no action lay. *Irwin v. Grey*, 3 F. & F. 635.

[2] The churchwardens alone have the regulation of the pews in a parish church, even if it also is a cathedral, subject to the control of the ordinary. *Cathedral Church of St. Columb, Londonderry, in re*, 8 L. T. N. S. 861. Every parishioner has a right to be seated, but not to a pew. *Ib.* Persons not parishioners have no right to a pew or a sitting. *Ib.* Rights to pews annexed to messuages by prescription cannot be severed from the occupancy of the messuages. *Ib.* In a cathedral, not being a parish church, semble, there can be no allocation of seats unless by the bishop. *Ib.* An ecclesiastical court cannot entertain a suit as to the allotment of seats in a place for divine worship, unless such place be a legally consecrated building. *Battiscombe v. Eve*, 9 Jur. N. S. 210; 7 L. T. N. S. 697. *Hinde*, App., *Charlton*, Resp., 12 Jur. N. S. 1008; 15 W. R. 226,—C. P. The Court of Arches will not in general disturb the decree of a local ordinary, granting a faculty for placing movable benches to form a pew in the chancel of the church. *Eld v. Perry & Ward*, Arches Court, 11 Jur. N. S. 228.

[3] Although the keeping of a pig is prohibited within the bills of mortality, yet, between the ambit of the bills of mortality and the ambit of the 18 & 19 Vic. c. 120, the keeping of a pig does not subject the owner to a penalty and forfeiture, unless the pig is an annoyance to others. *Chelsea (Vestry) v. King*, 34 L. J. M. C. 9; 11 L. T. N. S. 419,—C. P.

[4] The 24 & 25 Vic. c. 96, s. 23, which imposes a penalty upon any one who shall "unlawfully and wilfully kill a house-dove or pigeon," does not apply where the killing, though unlawful, was done by the party for the protection of his own property, and under the belief that he was acting in the exercise of a legal right. *Taylor v. Newman*, 9 Cox, C. C. 314; 32 L. J. M. C. 186; 11 W. R. 752; 8 L. T. N. S. 424,—Q. B.; 4 B. & S. 69.

PILOT.[1] 6 Abr. 132. *See* Merchant Shipping Act, 1854, 12 & 13 Vic. c. 188; 16 & 17 *id.* c. 129; 27 & 28 *id.* c. 58.

PIRACY. 6 Abr. 133. *See* 7 Wm. IV., c. 88; 13 & 14 Vic. c. 27.

PLANTATIONS. *See* Poison, placing in.

PLAYS. *See, ante,* Copyright; *post,* Theatre.

PLEADING.[2] 6 Abr. 135. *See* particular Title according to subject-matter.

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[1] The 371 section, 17 & 18 Vic. c. 104, does not mean that the license must be actually renewed on every 31st day of January, or any subsequent day, but may be renewed before that day, to take effect on that day. *The Beta*, 34 L. J. Adm. 76; 12 L. T.; 3 Moore, P. C. C. N. S. 23. The Trinity House of Leith has not power to grant licenses to pilots within the jurisdiction of the Trinity House of London. *Hossach v. Gray*, 6 B. & S. 598. The exemptions from compulsory pilotage given by 6 Geo. 4, c. 125, s. 59 (supplemented by the order in council, 18th February, 1854), are maintained by section 353 of the 17 & 18 Vic. c. 104, and qualify sections 376, 379. A British ship coming from a port north of Boulogne, and carrying passengers, is not bound to employ a licensed pilot in the river Thames. *The Earl of Auckland*, 1 Lushington, 387,—P. C.; 15 Moore, 304. Compulsory employment at Poole, *see* 1 Lushington, 427; 36 L. J., 601. At Newcastle-upon-Tyne, 36 L. J. Q. B. 22. A foreign-going vessel casually employed in taking a cargo from Liverpool to London is not a "ship employed in the coasting trade of the United Kingdom," within 17 & 18 Vic. c. 104, s. 379, and therefore, while so employed, is compellable to take a pilot. *The Lloyd's*, otherwise *Sea Queen*, 32 L. J. Adm. 197; 9 L. T. N. S. 236. Where, in a collision case, the owner of the ship proceeded against sets up the defence that the ship was in charge of a licensed pilot, the court will not presume that the act which occasioned the injury was the act of the pilot, and that he was solely to blame. The *onus probandi* is upon the defendant, and it is for him to call the pilot as a witness. *The Carrier Dove*, 2 Moore, P. C. C. C. N. S. 260. *The Velasquez*, 1 L. R. 36 L. J. P. C. 494. In order to entitle the owners of a vessel to the benefit of exemption from liability to damage, by reason of having a qualified pilot on board, it must be proved that the damage for which it is sought to make them liable was occasioned exclusively by the default of the pilot. *The Iona*, 1 L. R. C. P. 426. *The Schwalbe*, 14 Moo. P. C. 250. A man who is given his passage and food in a ship by the master, in consideration of his making himself as useful as he could on board, is not a passenger within the meaning of 6 Geo. 4, c. 123, s. 59, and such a person being on board a ship which was exempt from compulsory pilotage will not render pilotage compulsory. *The Hanna*, 1 L. R. Adm. 283; 36 L. J. 1. *The Lion*, 37 L. J. Ad. 29. An English court of justice will not enforce a foreign municipal law as to pilot, or give a remedy in the shape of damages in respect of an act which, according to its own principles, imposes no liability on the person from whom the damage is claimed. *The Liverpool, Brazil, and River Plate Steam Navigation Company v. Benham. The Halley*, 37 L. J. Adm. 37.

[2] A formal commencement or conclusion is not necessary to a plea to the further maintenance of an action. *Brooks v. Jennings*, 14 L. T. 19; 1 L. R. C. P. 476. A defendant had one day to plead after the happening of a certain event; the event happened on a Friday, and he did not plead until after six o'clock on Saturday; the plaintiff signed judgment on Saturday afternoon, shortly before five o'clock:—*Held*, that the judgment was signed too early, and the defendant was entitled to have it set aside. *Connelly v. Bremner*, 1 L. R. C. P. 557; 12 Jur. N. S. 762; 35 L. J. C. P. 319. By not traversing an averment of a total loss in a declaration on a policy on a ship, the defendant admits no more than that there is some partial loss. *King v. Walker*, 33 L. J. Ex. 325; 13 W. R. 232,—Ex. Ch. Where a defendant avers in his plea performance of conditions precedent generally, a general replication is a sufficient traverse by the plaintiff of non-performance of a particular condition precedent included in such general averment. *Tetley v. Wanless*, 15 L. T. N. S. 255. To an action by a seaman for wages, a defence that the Merchant Shipping Act, 1854, s. 189, prohibits any suit in a superior court for the recovery of wages under 50*l.* must be pleaded specially. *Johnston v. Hilberry*, 3 H. & C. 328. The effect of r. 4, T. T. 1853, where there is no local description in the body of the declaration, the county stated in the margin must be taken as amounting to a material averment that the cause of action arose in the county named, and if contradicted by the evidence it is ground of nonsuit. *Richardson v. Locklin*, 11 Jur. N. S. 951; 34 L. J. Q. B. 225. Where a defendant pleads a matter of defence which, in fact, arose after the

PLEDGE.[1]

POISONED Grains.[2] 26 & 27 Vic. c. 113.

POISONS, Administering. 23 Vic. c. 8; as to sale, 31 & 32 Vic. c. 121.

POLICE Acts Cons.[3] 10 & 11 Vic. c. 89; amended 19 *id.* c. 69; employment of, 22 & 23 *id.*; 23 & 24 *id.* c. 135; Metropolitan, 2 *id.* cc. 47, 71; 23 & 24 *id.* c. 135; Pensions, 24 & 25 *id.* c. 51; 31 & 32 *id.* c. 617.

POOR, Poor-Laws, and Poor-Rates.[4] 6 Abr. 160. *See* Settlement and Removal.

I. Of the Guardians, p. 357.
II. Of Overseers. *See ante.*
III. Of Vestries. *See, post,* Vestry.
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last pleading, the plaintiff may confess the plea, and sign judgment for his costs, although it contains no allegation that the matter of defence arose after the last pleading. *Howarth v. Brown*, 1 H. & C. 694; 32 L. J. Ex. 99.

[1] A. deposited debentures with B. as a security for the payment, at maturity, of a bill endorsed by A. and discounted by B., on the agreement that B. should have power to sell or otherwise dispose of the debentures if the bill should not be paid when due; before the maturity of the bill, B. deposited the debentures with C., to be kept by him as a security:—*Held*, that the repledge by B. to C. did not put an end to the contract of pledge between A. and B., and B.'s interest and right of detainer under it. *Donald v. Suckling*, l L. R. Q. B. 585; 14 L. T. N. S. 772. *See Halliday v. Holgate*, 3 L. R. Ex. 299; 18 L. T. 656.

[2] The 27 & 28 Vic. c. 115, amends the 26 & 27 Vic. c. 113, and prohibits the placing of poisoned flesh and poisonous matters in plantations, fields, and open places.

[3] The prisoner assaulted a police constable in the execution of his duty. The constable went for assistance, and after an interval of an hour returned with three other constables; after another interval of fifteen minutes the constables forced open the door, entered, and arrested the prisoner:—*Held*, that as there was no danger of any renewal of the original assault, and as the facts of the case did not constitute a fresh pursuit, the arrest was illegal. *Reg. v. Marsden*, 1 L. R. C. C. 131; 37 L. J. M. C. 80. The quarter-sessions, under s. 27, 3 & 4 Vic. c. 88, have power to constitute a single parish a separate police district. 34 L. J. M. C. 68; 6 B. & S. 195. A party attending a police court on a criminal charge is privileged from arrest. 3 L. J. Ex. 67.

[4] Recent acts relating to:—4 Wm. 4, c. 76 (facil. conv. under); 7 Wm. 4, and 1 Vic. c. 50; 7 & 8 Vic. c. 101; 12 & 13 Vic. c. 103;

I. Of the Guardians.[1]

IV. Of Unions of Parishes, and Extra-Parochial Places.[2]

13 & 14 Vic. c. 101; 14 & 15 Vic. c. 105. Payment of debts incurred by board of guardians, 22 & 23 Vic. c. 49. Continuation of boards, 23 & 24 Vic. c. 101; 26 & 27 Vic. c. 55; 30 & 31 Vic. c. 106; am. 25 & 26 Vic. c. 83. Authorising the letting of land to, in parishes inclosed under Acts of Parliament, 2 & 3 Wm. 4, c. 42. Exempting stock-in-trade, 3 & 4 Vic. c. 89; cont. 17 & 18 Vic. c. 66. Maintenance of, in houses not workhouses, 12 & 13 Vic. c. 13; 31 & 32 Vic. c. 122. Relief of, 10 & 11 Vic. c. 109; 11 & 12 Vic. cc. 110, 111; 12 & 13 Vic. c. 103; 13 & 14 Vic. c. 101; better distribution of the charge for the relief of, in unions, 28 & 29 Vic. c. 79. Inspectors, 31 & 32 Vic. c. 74. Rates, distraining for, 12 & 13 Vic. c. 14. Removal of, 3 Wm. 4, c. 40; 7 Wm. 4, and 1 Vic. c. 10; 7 Vic. c. 42; 9 & 10 Vic. c. 66; 10 & 11 Vic. c. 33; 11 Vic. c. 111; 24 & 25 Vic. c. 55; 25 & 26 Vic. c. 113; 26 & 27 Vic. c. 89; 27 & 28 Vic. c. 105. Settlement of, 6 Geo. 4, c. 57; 1 Wm. 4, c. 18. Rates and highway rates, 13 & 14 Vic. c. 99; rates, recovery of, 25 & 26 Vic. c. 82. Union relief, 26 & 27 Vic. cc. 4, 91; 28 & 29 Vic. c. 34. Metropolitan Poor Act, 30 Vic. c. 6; amended by 32 & 33 *id.* c. 63. Vaccination Act, 30 & 31 *id.* c. 84. Poor-law Amendment Act, *id.* 106 (1867.) To provide for uniformity in the assessment of rateable property in the metropolis, *id.* c. 67. Amending laws with respect to the rating of occupiers for short terms, and the making and collecting of the rate, *id.* c. 41. To amend law relating to repayment of loans to poor-law unions, *id.* c. 45. Cost of enlarging and improving workhouses, 29 & 30 Vic. c. 113, s. 8. Proof of orders of Poor-law Board, 29 & 30 Vic. c. 113, s. 4. As to paupers refusing to perform task-works, 29 & 30 Vic. c. 113. Audit of accounts, *id.* Religious education of children, *id.*

[1] An owner of small tenements who has compounded for the payment of the rates, and is rated accordingly, is qualified to be a guardian of the poor within 4 & 5 Wm. 4, c. 76, s. 38, even although he may not be an occupier. *R. v. Hampton*, 13 L. T. 451; 12 Jur. 587. The 22 & 23 Vic. c. 49, s. 1, is a bar to an action against the guardians, commenced after the time within which, by the act, they are permitted to pay any debt or claim; and that even if commenced within the time to which the Poor-law Board may extend the time for payment, if they had not made such extension. *Baker v. Billericay Union* (*Guardians*), 2 H. & C. 642; 33 L. J. M. C. 40; 9 L. T. 486. To an action on a contract for the price of coal supplied for the use of the workhouse, and used therein, made with the guardians of a poor-law union, it is no defence that the contract was not under seal; and the fact that one portion of the coal delivered was not according to the contract, is no ground for rejecting another portion which was. *Nicholson v. Bradfield Union* (*Guardians*), 1 L. R. Q. B. 620; 12 Jur. N. S. 686; 35 L. J. Q. B. 176; 14 W. R. 731; 14 L. T. N. S. 830. *See Mallam v. Oxford* (*Guardians*), 2 E. & E. 192. An order of a board of guardians was made upon an overseer for contribution, and upon an application to justices for a warrant of distress, they refused to grant it:—*Held*, that the court would review and control their discretion. *Bridgend and Cowbridge Union* (*Guardians*), *ex parte*, 9 L. T. N. S. 720,—Q. B. A *quo warranto* lies against a guardian elected under 4 & 5 Wm. 4, c. 76. 12 Jur. N. S. 583. It is not an offence under 14 & 15 Vic. c. 105, s. 3, to personate a voter who is dead. *Whiteley v. Chappell*, 19 L. T. N. S. 355; 38 L. J. M. C. 51.

[2] By 26 & 27 Vic. c. 33, s. 22, union assessment committees are not to require the production of documents relating to the assessment of the income-tax on concerns in the nature of trade. The guardians of a union formed under 4 & 5 Wm. 4, c. 76, had agreed that for the purposes of settlement the parishes should be considered as one parish. After the passing of 24 & 25 Vic. c. 55, which by section 9 enacts that the parishes comprised in any union formed under 4 & 5 Wm. 4, c. 76, shall contribute to the common fund thereof in proportion to the annual rateable value of the lands assessable to the relief of the poor, and in no other manner, the poor-law auditor allowed accounts of the union, in which the proportion of the contributions to be paid by each parish to the common fund was ascertained in the manner provided by 4 & 5 Wm. 4, c. 76. On motion to set aside the allowance under 7 & 8 Vic. c. 101, s. 35:—*Held*, that the 24 & 25 Vic. c. 55, s. 9, applies to unions under 4 & 5 Wm. 4, c. 76, s. 33, and therefore the contributions of the parishes ought to be according to the annual rateable value of the lands, &c. *Reg. v. Calthrop*, 4 B. & S. 216:—*Held*, also, that the auditor had power to ascertain and assess the share of the common charges to be borne by the parishes in the union. *Ib.* After the 20 Vic. c. 19, passed, two justices appointed an overseer for S., which at the time that act passed was an extra-parochial place, having no poor and no poor-rate. Afterwards, the Poor-law Commissioners ordered that it should be added to a union; and the guardians of the union ordered that it should contribute to the common fund 50*l.* No expenses had ever been incurred by the union on behalf of S., and it still had no poor and no poor-rate:—*Held*, first, that the order of annexation was good. *Staple Inn* (*Overseers*) *v. Holborn Union* (*Guardians*), 2. H. & C. 284:—*Held*, secondly, that S., being annexed to the union, became liable to contribute to its common fund, in

V. Of the Poor-Rate.

(A) *By whom made; Rate-books, and Expenses of Valuation.*[1]

(B) *Of Appeal against the Rate.*[2]

(C) *Of the Persons upon whom the Rate is Assessed.*[3]

(D) *Rating Landlord of Small Tenements.*[4]

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manner provided by the 24 & 25 Vic. c. 55, s. 9. *Ib. See Reg. v. Mytton*, 2 El. & El. 557. If the owners and occupiers of the lands in an extra-parochial place have not chosen to annex the place to some parish under sec. 4 of the 20 Vic. c. 19, the Poor-law Board may add the place as a parish to a poor-law union under 4 & 5 Wm. 4, c. 76, s. 32, without the consent of the owners or occupiers of land in the place. *Reg. v. Boteler*, 32 L. J. M. C. 91; 8 L. T. N. S. 514. Staple Inn is an extra-parochial place. *Staple Inn* (*Overseers*) *v. Holborn Union* (*Guardians*), 9 Jur. N. S. 652. The Poor-law Board may order the dismissal of the chaplain of a union, he being an officer under the 46th and 48th sections of the 4 & 5 Wm. c. 76, as interpreted by sec. 109. *Molineux, ex parte*, 7 L. T. N. S. 599; 9 Jur. 553.

[1] Where a body of persons are by statute constituted trustees for certain public purposes, and powers are conferred on them to levy rates upon the district to a certain limited amount, they are authorised (if not expressly prohibited) to apply the rates of any one year in the payment of debts properly incurred in a previous year in the execution of their trust. *Secus*, if their power of rating be unlimited in amount. Where, in such a case, the purposes of the trust can only be carried out by raising a sum of money larger than the current rates, the trustees are justified in raising this sum by way of loan. *Attorney-General v. Church*, 2 H. & M. 697. By a local act, the management of the parish and the relief of the poor were intrusted to trustees, but the vestry was to make the poor-rates, and a collector was to collect them. The overseers had nothing to do with making the rates or their application:—*Held*, that they were not the proper parties to whom a person who wished to have his name inserted on a poor-rate should make application *Reg. v. Islington* (*Overseers*), 33 L. J. M. C. 257; 8 L. T. N. S. 331. As to expense of valuation lists, *see Reg. v. Richmond*, 34 L. J. M. C. 186,—Q. B. The 11th section of the 17 Geo. 2, c. 38, which seems to limit the power of overseers of the poor to levy arrears not paid to the overseers who made the rate to the immediate successors in the office, does not affect the statute of Elizabeth, which enables any subsequent overseers to levy for arrears under justice's warrant. *Overseers of East Dean v. Everett*, 3 Ell. & Ell. 574.

[2] If, upon an appeal from the whole of a poor-rate, the sessions quash the rate, it is not essential, by 17 Geo. 2, c. 38, s. 6, that a new rate should be ordered, and the bad rate quashed by the same order. *Reg. v. Hampshire* (*Justices*), 12 W. R. 441; 33 L. J. M. C. 104,—B. C. Where a rate was quashed with costs, and the costs having been subsequently taxed, the order for them was made at an adjourned session:—*Held*, that the order was good. *Ib.* If, at the hearing by justices of a summons against A. for non-payment of a poor-rate, it appears that the rate is good on its face and unappealed against, and that A. is actually the occupier of the rated property in the rated parish, the justices are bound to issue a distress warrant to enforce the rate; and have no jurisdiction to inquire whether A.'s occupation is or not beneficial, the nature of the occupation being ground only for appeal to the quarter sessions against the rate. *Reg. v. Bradshaw*, 2 El. & Bl. 836. When, upon an appeal to the quarter sessions against a poor-rate, the court, under sect. 5 of 12 & 13 Vict. c. 45, directs the party against whom it is decided to pay to the other party his costs, such costs are to be recovered in the manner pointed out by sect. 27 of 11 & 12 Vict. c. 43, and an order of quarter sessions, directing such costs to be paid to the clerk of the peace, to be by him paid over to the party entitled to them, is good. *Gay v. Mathews*, 9 Jur. N. S. 716; 8 L. T. N. S. 674,—Ex. Ch.

[3] A municipal corporation were lords of the manor of the city of L., within which there was a common, and on which the freemen of the city had each a right of common of pasture for two head of cattle, which entirely exhausted all beneficial interest in the common. Since the Municipal Corporations Act the freemen were not members of the corporation:—*Held*, that although the corporation were in the occupation of the common they were not liable to be rated. *Mayor of Lincoln v. Holmes Common*, 2 L. R. Q. B. 482; 36 L. J. M. C. 73.

[4] Where a parish has adopted the Small Tenements Act the valuation list is to contain in the column for "Rateable Value" the true rateable value of the small tenement, and not the proportion of the rateable value which the owner has to pay. *Overseers of Sunderland-near-the-Sea v. Sunderland*, C. P. 34 L. J. N. S., M. C. 121. Where by a local act the owners, and not the occupiers, of small tenements are to be rated to the poor-rates, &c., and the owner has power to compound for such rates, whether the tenements are occupied or not, by paying one half of such rate; he is, nevertheless, entitled to the same deductions, under 6 & 7 Wm. 4, c. 96, as if the occupier was being assessed, and not merely one half of such deductions. *Reg. v. Dodd*, 1 L. R. Q. B. 16.

(E) *Of the Property subject to the Rate.*

(*a*) *Right of Shooting.*[1]

(*b*) *Rateability of Mills.*[2]

(*c*) *Gas Companies.*[3]

(*d*) *Of Docks.*[4]

(*e*) *Of Canals.*[5]

An owner of small tenements who compounds for his rates is qualified, under this section, to be a guardian of the poor, although he be not an occupier. *Reg. v. Hampton*, Q. B. 13 L. T. 431.

[1] An incorporeal hereditament, as a right of shooting, is not in itself the subject of a poor-rate. It can only be brought into account when it improves and enhances the value of the land to which it belongs. *Hilton and Wakefield v. Bowes* (*Overseers*), 1 L. R. Q. B. 359; 35 L. J. M. C. 137; 14 L. T., N. S. 512. An owner of land who is himself the occupier, but lets the right to take game to another, is assessable to the poor-rate in respect of his occupation, as being enhanced in value by the right to take game. *Reg. v. Battle Union*, 2 L. R. Q. B. 8; 12 Jur. N. S. 996; 36 L. J. M. C. 1.

[2] In March, 1863, the owner of a silk-mill gave up his business with the intention of never resuming it, and the mill had not since been worked, but, with the machinery and other articles and things in it, had been advertised for sale. All the contents of the mill were essential articles and things for a tenant to have in working it for the manufacture of silk. The machinery, some of which was affixed to the floors and ceilings, was in the nature of tenants' fixtures. A man occasionally went to the mill in order to protect the property against trespass or depredation:—*Held*, that the owner of the mill was rateable for the mill, but only upon its annual value as a warehouse for the machinery, articles, and things in it. *Harter v. Salford* (*Overseers*), 6 B. & S. 591; 11 Jur. N. S. 1036; 34 L. J. M. C. 206; 13 W. R. 861, Q. B.

[3] In assessing gas-works to the poor-rate deductions are not to be allowed in respect of any machinery or erections absolutely essential to the manufacture of the gas, although they might be removed without actual damage to themselves or to the freehold; such articles having been erected as permanent and essential appendages for the purposes of the manufacture and for the improvement of the inheritance. And the fact that by the course of business in the gas-trade a tenant renting gas-works would have to take to the retorts, &c., and pay for them, would not prove that he was entitled to a reduction as to them in assessing the rateable value. The value of the meters alone was allowed to be deducted. *Reg. v. Lee*, 1 L. R. Q. B. 241; 35 L. J. M. C. 105; 13 L. T. N. S. 704. *Reg. v. West Middlesex Waterworks Company*, 1 Ell. & Ell. 716; 5 Jur. N. S. 1159. *Sheffield United Gas Company v. Sheffield* (*Overseers*), 9 Jur. N. S. 623; 32 L. J. M. C. 169; 11 W. R. 1064—Q. B. Rateability of meters, retorts, "purifiers," steam-engines, boilers, gas-holders. *R. v. the Inhabitants of Lee*, 25 L. J. Q. B. M. C. 106.

[4] A dock company, incorporated, were owners and occupiers of a dock for the reception of ships, with quays, warehouses, cranes, weighing-machines, and other works, and also of railways or tramroads for transporting traffic to and from the docks, and communicating with their warehouses and with other railways. The railways or tramroads were made under the powers of their act, and were free to the public on payment of certain tolls. By the Local Government Act, 21 & 22 Vic. c. 98, s. 55, the general district rates shall be made and levied upon the occupier of all such kinds of property as are assessable to the poor-rate, subject to this, among other exceptions, that "the occupier of any land covered with water, or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any act of parliament for public conveyance," is to be assessed at one-fourth only of the net annual value:—*Held*, first, that the dock was "land covered with water," within the exception, and therefore rateable at one-fourth only of the net annual value. *Newport Dock Company v. Newport Board of Health*, 2 B. & S. 708:—*Held*, secondly, that the warehouses and other adjuncts to the dock were rateable at the net annual value. *Ib.*:—*Held*, thirdly, that the railways or tramroads were constructed for public conveyance, within the exception, and therefore rateable at one-fourth only of the net annual value. *Ib. Peto v. West Ham* (*Overseers*), 2 Ell. & Ell. 144.

[5] An act of parliament incorporating a canal company enacted that the company should be from time to time rated to all parliamentary and parochial rates and assessments in respect of the lands and grounds taken by them in pursuance of the act, "in the same proportion as other lands and grounds lying near the same are or shall be rated," and as the same would be rateable in case they were the property of individuals, in their natural capacity. In course of time adjoining lands became covered with buildings and wharves:—*Held*, differing from the decision of *Reg. v. the Grand Junction Canal Company*, 7 W. R. 597, that the company was not to be rated according to the value of agricultural land, disregarding the value of the houses, &c., but that the value of the land built on, according to what a tenant

(*f*) *Rateability of Tithes.*[1]

(*g*) *Waterworks.*[2]

(*h*) *Rateability of Trees and Underwood.*[3]

(*i*) *Of Exemption from Poor-Rates.*[4]

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from year to year would give for it, should be brought into hotchpot with the ordinary land in each parish, and the company be rated according to the aggregate value of the whole. *Reg. v. Glamorganshire Canal Company*, 3 Ell. & Ell. 186.

[1] An incumbent, owner of a tithe rentcharge, who voluntarily endows a district parish, formed for spiritual purposes out of a part of his own parish, by granting to the minister of such new district parish a rentcharge on the tithe rentcharge, is not entitled, in an assessment to the poor-rate, to claim a deduction from the total amount of tithe rentcharge in respect of the portion which he has thus granted away. *Lawrence v. Tolleshunt Knights* (*Overseers*), 2 B. & S. 533. The incumbent of a benefice, being derived partly from glebe-lands, partly from interest of money invested in the funds, and partly from a tithe rentcharge:—*Held*, that in the assessment of the incumbent to the poor-rate, the salary of a curate necessarily employed by him, was to be set against all the sources of income generally and proportionately; and that therefore he was not entitled to a deduction in respect of the same from the tithe rentcharge only, notwithstanding that the glebe-lands were situate in a separate ecclesiastical district, and beyond the pastoral charge of the incumbent. *Scriven with Tentergate* (*Overseers*) *v. Fawcett*, 9 Jur. N. S. 1125; 32 L. J. M. C. 161; 8 L. T. N. S. 352—Q. B.; 3 B. & S. 797. *Reg. v. Groves*, 2 El. & Bl. 793. As to allotments in lieu of vicarial tithes, *see Hackett v. Long Bennington* (*Overseers*), 16 C. B. N. S. 38; 33 L. J. M. C. 1; 12 W. R. 433; 9 L. T. N. S. 769. Deduction from rentcharge in respect of curate's salary, *R. v. Inhabitants of Sherford*, 36 L. J. M. C. 113.

[2] It may be doubted whether the distinction which has been taken between direct and indirect sources of profit, as applied to the mains and pipes of a water company running through different parishes, is well founded, and more especially in cases where the mains only belong to the company, and not to the service-pipes. *Sheffield United Gas-light Company v. Sheffield* (*Overseers*), 4 B. & S. 135. A waterworks company was empowered by act to let sites for erecting mills on the banks of a watercourse, and also to contract to supply water-power to the mills to be so erected, at such annual rents as might be agreed upon. In respect of the annual income derived from this source, the company was rated as occupiers, and not the millowners:—*Held*, that the assessment was rightly made. *Greenock Police Trustees v. Shaws Water Company*, 9 Jur. N. S. 1207; 9 L. T. N. S. 182, H. L. As to rateable value of water conveyed by pipes for the purpose of working lead-mines, see *Talargoch Mining Company v. St. Asaph Union*, 37 L. J. M. C. 149.

[3] Beech-trees, though looked upon as timber by the custom of that part of the country where they grow, are rateably as "saleable underwood," within the meaning of 43 Eliz. c. 2, s. 1, if they are cut and trained so as to produce, no matter at what interval, a succession of stems and shoots. *Fitzhardinge v. Pritchett*, 36 L. J. M. C. 49; 2 L. J. Q. B. 135.

[4] The only exemption from liability to poor-rates under stat. 43 Eliz. c. 2, s. 1, as an "occupier," is the crown and the servants of the crown—such as the offices of Secretary of State, Horse Guards, post-offices, police-offices, &c.; but where trustees are the occupiers of property (in the present case docks), and they hold surplus profits for public, not government purposes, they are not exempt from liability (overruling *R. v. Salters Load Sluice Navigation*, 4 T. R. 730. *R. v. Liverpool*, 7 B. & C. 61. *R. v. Weaver Navigation*, *ib.* 70 n.). *Jones v. Mersey Docks and Harbour Board*, H. L. 11 Jur. N. S. 746. *Leith Harbour and Docks Commissioners v. Inspector of Poor*, 1 L. R. H. L. Sc. 17. *Reg. v. Stapleton*, 33 L. J. M. C. 17; 12 W. R. 49; 9 L. T. N. S. 322—Q. B. The crown is subject to no poor-rate. This immunity has a wide signification, for not only are the palaces of which her majesty is in actual occupation deemed free from assessment, but the House of Lords is held to be exempt, on the ground that it is regal. *Clyde Navigation Trustees v. Adamson*, 4 Macq. 931. *Reg. v. Morrish*, L. J. M. C. 245; 11 W. R. 960; 8 L. T. N. S. 697—Q. B. *R. v. Heath*, 35 L. J. M. C. 113. Metropolitan Board of Works are not rateable for the sewers, but they are for the wharves, engine-houses, &c. *R. v. Metropolitan Board of Works*, 3 L. J. N. S. 258. As to exemption of property of municipal corporations by 4 & 5 Vic. c. 48, s. 1, *see R. v. the Mayor, &c. of Oldham*, 37 L. J. M. C. 169. By act of parliament the justices of the county of L. were empowered to provide courts, judges' lodgings, offices, &c., necessary for carrying on business usually transacted at assizes. They were further empowered to permit the use of the buildings for any lawful purpose they might think proper. They allowed the corporation of M. to use part of the buildings for the quarter sessions, and for the city court of record, and they received 900*l.* a-year in respect of such use:—*Held*, that the justices were rateable to the poor-rate in respect to the part so let off to the corporation. *The Justices of Lancashire v. the Overseers of Cheetham*, 37 L. J. M. C. 12. Constructions by the Commissioners of Works by the servants of the crown,

(*k*) *Of Bridges.*[1]

(*l*) *Lunatic Asylums.*[2]

(*m*) *Occupation must be Beneficial.*[3]

(F) *Of Railways.*[4]

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are not rateable. *R. v. M'Cann*, 37 L. J. M. C. 25; 3 L. R. Q. B. 141; 17 L. T. 643. Officers of the county constabulary under 2 & 3 Vic. c. 93, are not rateable in respect of their occupation of rooms in the police-office, in which, by the terms of their appointment, they are required to live; neither are justices of a county rateable as occupiers of a building, crown property, which they use only as an assize court, and for meetings of local interest convened by the high sheriff of the county; as in the latter case the building is really in the hands of the crown for public purposes, and in the former the rooms are used for the purposes of the government. *Jones v. the Mersey Docks* commented on. *R. v. the Inhabitants of St. Martin's, Leicester*, and *R. v. the Inhabitants of Castle View, Leicester*, 36 L. J. M. C. 99; 1 L. R. Q. B. 493.

[1] The Commissioners of Works and Buildings were incorporated under certain statutes, and empowered to construct a bridge at Chelsea, and to borrow from the Treasury 120,000*l.* on an assignment of the tolls. The commissioners were authorised to take tolls, which were to be applied in payment of the expenses of the bridge, then in repayment of the sum borrowed, and when that had been repaid there was to be no toll charged for foot-passengers. There was no ultimate appropriation of any surplus:—*Held*, that the commissioners were not liable to be rated to the relief of the poor, as they were in occupation of the bridge as servants of the crown, deriving themselves no benefit from the receipt of the tolls; and were therefore exempt from the operation of 43 Eliz. c. 2, s. 1, as explained in *Jones v. Mersey Docks*, 11 H. L. Cas. 443; 35 L. J. M. C. 1. *Reg. v. McCann*, 37 L. J. M. C. 25; 16 W. R. 397; 17 L. T. N. S. 643. Affirmed on appeal, 3 L. R. Q. B. 677; 37 L. J. M. C. 123; 16 W. R. 985; 19 L. T. N. S. 115—Ex. Ch.

[2] Under 16 & 17 Vic. c. 96, s. 35, land used for lunatic asylums is rateable only at the value at which the land was assessed at the time of its purchase. The committee of visitors are not rateable in respect of the profits. *R. v. Fulbourn (Overseers)*, 6 B. & S. 451.

[3] In order to render an occupier liable to be rated for the relief of the poor under 43 Eliz. c. 2, his occupation must be beneficial. *Jones v. Mersey Docks and Harbour Board; Mersey Docks and Harbour Board v. Cameron*, 11 Jur. N. S. 746; 35 L. J. M. C. 1; 12 L. T. N. S. 643—H. L. A school built on land, vested in trustees for the purposes of a school for the education of the poor, partly supported by weekly payments by the children, partly by voluntary contributions, and partly government gifts, is rateable. *Laughlin v. Overseers of Saffron Hill*, 13 W. R. 678. A barge fastened to posts driven into the bed of a river is not rateable. *Guest v. Local Board of Oxford*, 3 L. J. N. R. 256.

[4] In assessing a railway company in respect of the portion of their line passing through a parish, and in respect of station, buildings, and sidings within the same, an allowance must be made for interest on capital and tenants' profits, calculated with reference to the actual value of the rolling stock at the time the rate is made. *R. v. the North Staffordshire Railway Company*, 30 L. R. (N. S.) M. C. 68; 3 E. & E. 392. A railway connecting the towns of C. and G. was owned, as to the half nearest to C. by the Great Western Railway Company, and as to the other half by the Midland Railway Company. Each company had running powers over the whole railway. The overseers of a parish through which the half of the railway nearest to C. passed, having rated the Midland Company to the relief of the poor:—*Held*, that the company was not rateable, inasmuch as the mere possession of running powers over that part of the railway did not amount to an occupation of it. *Midland Railway Company v. Badgworth*, 13 W. R. 202; 11 L. T. N. S. 303—Q. B. By an agreement between two separate railway companies (forming together a continuous line), it was stipulated that the former should be at liberty to convey such of their passengers as had taken tickets for the entire distance over the line of the latter, paying for each passenger a certain sum by way of toll to the latter company:—*Held*, that in estimating for the purposes of a poor-rate the gross receipts earned by one railway company, in respect of portions of their line running through different parishes, the company was at liberty to deduct such sums as had been received by them and paid over to the other company in pursuance of the agreement; and that the residue, after such deduction, was the rateable value of the line. *Reg. v. St. Pancras Vestry*, 9 Jur. N. S. 1102; 32 L. J. M. C. 146; 11 W. R. 615; 8 L. T. N. S. 273—Q. B. *Reg. v. Eastern Counties Railway Company*, 4 B. & S. 58; 8 L. T. N. S. 419; 32 L. J. M. C. 174. The appellants, a railway company, and the sole owners of a station, in 1848 entered into an arrangement, by deed, with the N. W. Railway Company, by which the latter company were for 999 years to have the joint use of part of the station, and the exclusive use of another part, on certain stipulated terms. In consequence of a subsequent falling off in their traffic, the station became of less value to the N. W. Company, and the real present value to them was much below the sum actually paid by them to the appellants under the agree-

(G) *Rateable Value, how Ascertained.*[1]

ment. On appeal against a poor-rate,—*Held*, on a case in which the appellants were to be deemed the persons rateable for the whole occupation of the station, that they were assessable on the full amount which they received from the N. W. Company. *R. v. the Overseers of Fletton*, 30 L. J. Rep. (N. S.) M. C. 89; 3 E. & E. 450. *Great Eastern Railway Company v. Overseers of Haughley*, 1 L. R. Q. B. 666; 35 L. J. M. C. 229; 12 Jur. 596. The rateable value of land in a parish may be increased by its producing a return to the occupiers out of the parish, as where a branch railway occupied by a company owning a main line into which it runs, produces a profit by virtue of the traffic which it causes over such main line. *London and North Western Railway Company v. Chunnock* (*Churchwardens*), 9 L. T. N. S. 325—Q. B. *The Great Western Railway Co. v. the Overseers of Badgworth*, 2 L. R. Q. B. 251; 36 L. J. M. C. 33. By a railway amalgamation a company was empowered to take a toll not exceeding 2*d.* a ton upon certain goods passing through the Shildon tunnel. This toll the company did not take, upon the ground that if they did take it the carriage of the goods would be altogether lost to them. The company being rated to the poor-rate in respect of this toll:—*Held*, that as the toll was not in fact taken, it could not be assessed to the poor-rate. *Reg. v. Stockton and Darlington Railway Company*, 8 L. T. N. S. 422—Q. B. In rating a railway, an arbitrator took as the amount to be deducted in respect of the depreciation of rolling stock the proportionate part of a fund for renewing the stock when it would naturally be worn out:—*Held*, that the mode of calculation was warranted by the Parochial Assessment Act, as the tenant of a railway might reasonably expect his tenancy would last beyond the time when it might legally terminate. 35 L. J. M. C. 229. By the Lands Clauses Consolidation Act, 1845, s. 133, promoters of any undertaking who become possessed by statute of lands liable to the poor-rate are, till their works are completed, "to make good the deficiency" in the rate consequent on their taking the land, the deficiency to be computed according to the rating at the time of the special act, and to be paid on demand:—*Held*, that this section does not make such promoters liable to be rated, but only to pay such deficiency. *The Mayor &c. of London v. the Churchwardens of St. Andrew's, Holborn*, 33 L. J. M. C. 95.

[1] The 6 & 7 Wm. 4, c. 96, s. 1, enacts that no poor-rate shall be allowed unless made upon an estimate of the rent at which the premises to be rated "might reasonably be expected to let from year to year:"—*Held*, that the rent referred to is what a yearly tenant would give *rebus sic stantibus*, and not what he might be expected to give *communibus annis*. *Staley v. Castleton* (*Overseers*), 5 B. & S. 505; 10 Jur. N. S. 1147; 33 L. J. M. C. 178; 10 L. T. N. S. 606—Q. B. The payment by the landlord of water-rent for water supplied to a house (such supply and payment being optional) does not entitle the occupier to a deduction in respect thereof as being an expense necessary to maintain the premises in a state to command the rent within the meaning of 6 & 7 Wm. 4, c. 96, s. 1. *Reg. v. Bilston* (*Overseers*), 6 B. & S. 908; 1 L. R. Q. B. 18; 12 Jur. N. S. 139; 35 L. J. M. C. 73; 36 id. 97. *Reg. v. Dodd*, 6 B. & S. 903; 1 L. R. Q. B. 16; 12 Jur. N. S. 159; S. C. nom. *Reg. v. Bilston* (*Overseers*), 35 L. J. M. C. 97—Q. B. The assessment committee of a union acting under the 25 & 26 Vic. c. 103, s. 14, directed the overseers of a township within the union to send in a valuation list within three months. Before the expiration of that time the committee appointed a valuer for themselves. Subsequently the overseers sent in their valuation, which the committee rejected as unsatisfactory. The valuer then made his valuation, which exceeded by one-sixth that of the overseers:—*Held*, that the power of the overseers to make the valuation was superseded by the appointment of the valuer by the committee. *Reg. v. Richmond*, 6 B. & S. 541. And that the parish was not liable for the expense of the valuation made by the committee, either as costs or as compensation. *Ib.* A valuer who has, in pursuance of a contract with overseers, made a valuation under 25 & 26 Vic. c. 103, s. 14, is not compellable to revalue under the provisions of 27 & 28 Vic. c. 39, s. 4, though that act passed before his valuation was formally completed. *Reg. v. Cobb*, 13 L. T. N. S. 802. In ascertaining the net rateable value of property assessable to the poor rate, an allowance is made for rates and taxes. And such allowance ought to be made upon the net rateable value after the rates and taxes themselves, in addition to all other proper allowances, have been deducted. *Tyne Improvement Commissioners v. Chirton* (*Churchwardens and Overseers*), 2 L. J. M. C. 192,—Q. B. In estimating rateable value, allowance should be made for repairs and for contingent or future renewal of machinery. *R. v. Wells*, 36 L. J. M. C. 109; 2 L. R. Q. B. 542. The right of taking game should be included in the estimate. *R. v. Union of Battle*, 36 L. J. M. C. 1. In assessing a brewery and a public-house, where the occupier of the latter is bound by contract to take his beer from the occupier of the former, paying less rent in consequence, neither the rateable value of the brewery is to be increased, nor that of the public-house to be decreased, in consequence of such contract. Per Erle, C. J., and Smith, J.; dissentiente, Byles, J. The case of *Allison v. Monkwearmouth*, 4 E. & B. 13, virtually overruled. *Overseers of Sunderland-near-the-Sea v. Sunderland*, C. P.; 34 L. J. N. C. Mag. Cas. 121.

(H) *A Decision against a Rate not binding on a future year.*[1]

(I) *Collecting and Enforcing Payment of Poor-Rate.*[2]

POST-DATED. *See* Bills and Notes; Checks.

POST-OFFICE.[3] 6 Abr. 195. As to Savings' Banks, 24 Vic. c. 14; 26 & 27 id. c. 14; 32 & 33 id. c. 59; Paying Taxes in Scotland and Ireland by Postage Stamps, 27 & 28 Vic. c. 56, s. 15.

POUNDAGE, Sheriff's. 4 Abr. 35. *See* Sheriff.

POUND-Breach. 4 Abr. 117. *See* Distress.

POWER or Letter of Attorney.[4] 6 Abr. 195. *See* Principal and Agent; *see* also Stamps.

POWERS.[5] 6 Abr. 196.

PRACTICE. 6 Abr. 209. *See* particular Titles, as Abatement of Suit, &c.

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[1] That the court has decided against a poor-rate for one year is no reason why it should not decide in favour of a poor-rate for another and a different year, in respect of the same property, and in a suit between the same individuals. The doctrine of *res judicata* does not apply. *The Commissioners of the Leith Harbour*, Apps. *v. The Inspector of the Poor*, Resp. 1 Law Rep. H. L. Scotch App. 17.

[2] A demand of payment of a poor-rate by a collector, appointed by the overseers and assistant-overseer for the purpose of assisting in collecting the poor-rate, was held sufficient to entitle the collector to proceed by summons to enforce payment in the usual mode by distress. *Yewdall v. Craven*, 11 L. T. N. S. 368. Where a poor-rate is good on the face of it, and the person rated is in the actual occupation of the property rated by himself or his servant, the justices are bound to issue their warrant, and have no jurisdiction to consider the question whether the occupation is a beneficial one, which is a question for appeal to the quarter sessions. *Reg. v. Bradshaw*, 2 Ell. & Ell. 836. A commitment by justices for non-payment of poor-rates is in the nature of civil process, and the proper prison for a person so committed by the justices of Middlesex is the prison in Whitecross-street. *Reg. v. Debtors' Prison, Whitecross-street (Governor)*, 34 L. J. M. C. 193. An order of sessions is not bad for not ordering the overseers to make a new rate, 33 L. J. M. C. 104.

[3] A letter-carrier, whose duty it was, in case he was unable to deliver any letter, to bring it to the post-office on his return, not having delivered a letter containing money, gave no account of it, and being asked why he had not delivered it, produced it unopened, and the coin safe within, from his trousers pocket, stating, untruly, that the house where it ought to have been delivered was closed. The jury found that he detained it with the intention of stealing it:—*Held*, that so dealing with the letter amounted to larceny. *Reg. v. Poynton*, 9 Cox, C. C., 249; 1 L. & C. C. C., 247. A railway company is not bound to carry a mail-guard with bags at the same rate as an ordinary passenger. *Reg. v. Irish South Eastern Railway Company*, 1 Ir. Com. Law Rep. 29.

[4] Irrevocable when coupled with an interest. *M'Dowell v. Reede*, 14 Ir. Chanc. Rep. 190.

[5] Although a power simply collateral may be exercised by an infant, a devise to an infant and others upon a discretionary trust for sale cannot be exercised by them. *King v. Bellord*, 1 H. & M. 343; 32 L. J. C. 646. A donee of a power cannot delegate its exercise to any other person. *Topham v. Portland (Duke)*, 32 L. J. C. 257; 8 L. T. N. S. 180—L. J. A will, not under seal but executed according to the provisions of the Wills Act, is a valid execution of a power created since the act, to appoint "by any instrument in writing, signed, sealed, and delivered in the presence of two witnesses." *Taylor v. Meads*, 10 Jur. N. S. 1012; 10 L. T. N. S. 475. Or three witnesses. *Hubbard v. Lees*, 35 L. J. Ex. 160; 2 L. R. Ex. 255. The intentions of the donor are to be collected from the instruments, and not from parol evidence, but parol evidence is admissible to show the purposes for which the power is exercised, although they may not appear on the deeds. *Topham v. Portland (Duke)*, 32 L. J. C. 257; 8 L. T. N. S. 180—L. J. The court will look to the purposes for which a power is exercised, and an appointment which has for its object to effect purposes not in accordance with the intentions of the donor will be treated as a fraud on the power. *Portland (Duke) v. Topham*, 10 Jur. N. S. 501; 10 L. T. N. S. 355—H. L. As to power to grant repairing leases, *Easton v. Pratt*, 2 H. & C. 676; 33 L. J. Ex. 233. As to leasing power under statutes, *Shrewsbury v. Beazley*, 19 C. B. 651; 34 L. J. C. P. 382.

PREROGATIVE.[1] 6 Abr. 213. *See* Palace Royal.

PRESCRIPTION.[2] 6 Abr. 218. *See* Common; Easement; Lights; Markets and Fairs; Tolls; Watercourses; Ways.

PRINCIPAL and AGENT. 6 Abr. 220. *See* also Master and Servant.

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I. Of the Appointment and Authority and Different Kinds of, and who may be Agents.[3]

II. How Authority must be Executed.[4]

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[1] Although the crown may by its prerogative establish courts to proceed according to common law, it cannot create any new court to administer any other law. *Natal, Bishop, In re*, 12 L. T. N. S. 188—P. C. *In the matter of the Jersey Jurats*, 1 L. R. App. P. C. 94. The prerogatives of the crown cannot be affected except by express legislative enactment. *Weymouth (Mayor, &c.) v. Nugent*, 11 Jur. N. S. 465; 34 L. J. M. C. 81; 11 L. T. N. S. 672—Q. B. *Jones v. Mersey Docks*, 11 H. L. 443; 6 B. & S. 22; 35 L. J. M. C. 1. A carriage and horses belonging to the Queen, driven by her coachman, and used by a member of her household, or his family, with the Queen's permission, though not upon her service, are exempt from turnpike tolls. *Westover v. Perkins*, 2 El. & El. 57. The personal estate of an intestate who leaves no next of kin belongs absolutely to the crown, as part of the droits of the crown. *Atty.-Gen. v. Köhler*, 9 H. L. Cas. 654. The courts of this country cannot interfere with the prerogative rights of the sovereign of another country. *Gladstone v. The Ottoman Bank*, 9 Jur. N. S. 246; 32 L. J. C. 228; 8 L. T. N. S. 162.

[2] There is no distinction between the evidence necessary to prove averments in a plea under 2 & 3 Wm. 4, c. 71, and a plea of prescription, properly so called. *Carr v. Lambert*, 3 H & C. Ex. 499.

[3] No one can become the agent of another except by the will of the principal, manifested in writing, or orally, or by his being placed in a situation in which, according to the ordinary usages of mankind, he would be understood to represent and act for the principal. *Pole v. Leask*, 9 Jur. N. S. 829; 8 L. T. N. S. 645—H. L. The burthen of proof is on the person dealing with any one as an agent. He must show that the agency did exist, and that the agent had the authority he assumed to exercise, or otherwise that the principal is estopped from disputing it. *Ib.* The right of A. to do an act, *e.g.* to distrain on the property of B., depends on the authority he really has, not on what he says he has. *Snell v. Finch*, 13 C. B. N. S. 651; 9 Jur. N. S. 333; 32 L. J. C. P. 117. The dealing in or buying and selling for reward of shares in English or foreign joint-stock banks or companies, or the debts, stocks, or securities of foreign governments, is an acting and assuming to act as broker within 57 Geo. 3, c. 60. *Scott v. Jachson*, 19 C. B. N. S. 134. To a declaration for a breach of contract in not taking the plaintiff into partnership, the defendant pleaded that he was a broker within 6 Anne, c. 16, and 57 Geo. 3, c. 60, and that the plaintiff had not been admitted a broker pursuant to those acts:—*Held*, a good plea. *Hunter v. Wykes*, 15 L. T. N. S. 210.

[4] Under special circumstances an agent directed to make certain purchases may be justified in only buying part. *Ireland v. Livingstone*, 36 L. J. Q. B. 50; 2 L. R. Q. B. 99. *Johnston v. Kershaw*, 36 L. J. Ex. 44; 2 L. R. Ex. 82. *Bostock v. Jardine*, 3 H. & C. 700; 11 Jur. N. S. 586; 34 L. J. 142, Ex.; 11 L. T. N. S. 577. But where defendant authorised a broker at Liverpool to underwrite marine policies for him, "not exceeding 100*l.* by any one vessel." The broker

III. Liability of Principal as regards Third Persons.[1]

IV. Rights of Principal with regard to Third Persons.[2]

V. Of the Responsibility of the Agent to Principal, and Inability to dispute Title.[3]

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underwrote a marine policy for 150*l.*;—*Held*, that the agent had no authority to underwrite for 150*l.*, and that the contract being indivisible the assured could recover nothing. *Baines v. Ewing*, 35 L. J. Ex. 194; 1 L. R. Ex. 320; 12 Jur. N. S. 787; 14 L. T. N. S. 733. *Trickett v. Tomlinson*, 13 C. B. N. S. 663; 7 L. T. N. S. 678. An owner of a ship gave to his agent a power of attorney, authorising him to charter the ship on any terms he thought best. The agent made a charter, in which he described his principal as owner of a British ship, A 1:—*Held*, that this was a warranty that the ship was A 1 at Lloyd's, and that the agent had authority to make such a warranty. *Routh v. Macmillan*, 10 Jur. N. S. 158; 33 L. J. Ex. 38; 9 L. T. N. S. 541; 2 H. & C. 750; 10 Jur. N. S. 158; 33 L. J. Ex. 38. *Hughes v. Graeme*, 33 L. J. Q. B. 335. An auctioneer sold at an auction some goods on conditions which required the purchaser to make full cash payment to the auctioneer before delivery of the goods. The auctioneer received from the purchaser a bill of exchange in part payment of the goods, and agreed to take it as cash, and it was discounted for him at his banker's. Before the bill came to maturity, the vendor gave the purchaser notice to pay no money to the auctioneer. The bill was paid at maturity. The auctioneer having failed to pay over the whole of the receipts of the sale, the vendor sued the purchaser for payment of the goods:—*Held*, that the auctioneer had no authority to take payment by a bill, and that the vendor was therefore entitled to a verdict for the amount of the bill. *Williams v. Evans*, 1 L. R. Q. B. 352; 35 L. J. Q. B. 111. *Catterall v. Hindle*, 1 L. R. C. P. 186; 35 L. J. C. P. 161.

[1] The knowledge of an agent is the knowledge of the principal, however acquired. *Dresser v. Norwood*, 10 Jur. N. S. 851—Ex. Ch.; 14 C. B. N. S. 574; 32 L. J. C. P. 201; 11 W. R. 524; 8 L. T. N. S. 247. The principal in a business who holds out an agent to the world as ostensible principal, and carries on the business in the name of such agent, is bound by all his acts as are incidental to the ordinary conduct of the business, and such liability as to the rest of the world cannot be restricted by any private arrangement between them. *Edmunds v. Bushell*, 35 L. J. Q. B. 20. *Heyworth v. Knight*, 10 Jur. N. S. 866; 33 L. J. C. P. 298. Where an agent having made a contract in his own name has been sued on it to judgment, no second action is maintainable against the principal. *Priestly v. Fernie*, 11 Jur. N. S. 813; 34 L. J. Ex. 173; 13 L. T. N. S. 208. If a person buys goods of another whom he knows to be acting as agent, though he does not know who the principal is, he cannot set off a debt due to him from such agent in an action by the principal for the price of the goods. *Semenza v. Brinsley*, 11 Jur. N. S. 409; 34 L. J. C. P. 161; 13 W. R. 634; 12 L. T. N. S. 265. *Dresser v. Norwood*, 17 C. B. N. S. 466; 34 L. J. C. P. 48—Ex. Plea to an action by the principal for goods sold, that they were sold by D. as apparent principal, and bought by defendant from him as such, and on D.'s own account and without notice that he was agent merely, and that defendant paid D. before notice that he was agent:—*Held*, a bad plea. *Drakeford v. Piercy*, 14 L. T. N. S. 403,—Q. B.

[2] A principal who employs an agent to sell on a *del credere* commission is not liable for advances made on the goods, when made to him as a known agent, nor can they be allowed in discount. *Catterall v. Hindle*, 35 L. J. C. P. 16. Nor can such an agent sue in his own name. *Bramwell v. Spiller*, 5 L. J. N. 11. The plaintiffs, through a stockbroker, S., bought of the defendants (stockbrokers) two railway debentures. The defendants were acting as brokers for A., but did not disclose the principal to the buyers' broker. The sale note signed by the defendants purported to be a sale by them. They sent what purported to be a genuine transfer signed by A., B., and C., but it was in fact signed by A. only, who had forged the signatures of B. and C. The debentures belonged to A., B., and C. as joint trustees. The transfer was registered by the railway company, and interest paid to the plaintiffs upon the debentures. B. and C. by a suit in Chancery compelled the plaintiffs to deliver to them the debentures, and to pay to them the interest received:—*Held*, that the plaintiffs were entitled to recover from the defendants the sum paid for the debentures and the interest they had been compelled to refund to B. and C. *Royal Exchange Assurance v. Moore*, 11 W. R. 592; 8 L. T. N. S. 242—Q. B.

[3] An agent for the purchase of a public-house is liable in damages to his employer for negligently conducting the purchase, although he advises his employer to go and examine the business for himself, and the employer does so. *Smith v. Barton*, 15 L. T. N. S. 294. The defendant, the London agent of the plaintiff, a Parsee merchant at B., having a claim against him, partly for a debt not disputed, and partly for a liquidated demand which was disputed, wrongfully transferred to himself certain shares of the plaintiff's, under a power of attorney, in satisfaction of his supposed claim:—*Held*, that he was entitled to recover the full value of the shares. *Dantra v. Stiebel*, 3 F. & F.

VI. Of the Responsibility of the Principal towards his Agent.[1]

VII. Of the Responsibility of the Agent towards Third Persons.[2]

VIII. Agent's Lien, and Power to Pledge.[3]

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951. Goods belonging to R. were seized by the plaintiff, under a distress for rent of a house alleged to have been demised by the plaintiff to R., but which was, in fact, occupied by the latter under an agreement for the purchase. The goods were delivered by the plaintiff to the defendant, an auctioneer, for the purpose of being sold. R. thereupon served upon the defendant a notice declaring the distress to be illegal, and demanding that the proceeds of the sale should be paid over to him. The defendant accordingly, having received the proceeds, refused to pay over the same to the plaintiff, who sued him for not accounting, and for money had and received:—*Held*, that the defendant was entitled to set up the *jus tertii*, although he had not paid over the proceeds to R., the court inferring that the defendant withheld the proceeds from the plaintiff, and defended the action by the authority of R. *Biddle v. Bond*, 34 L. J. Q. B., 164; 6 B. & S. 225. *Hunt v. Maniere*, 33 Beav. 157; 34 L. J. Ch. 142.

[1] An agent for sale cannot become purchaser or co-purchaser and also be entitled to commission on the sale, although he purchase at the price demanded by the seller. *Salomons v. Pender*, 34 L. J. 95; 3 H. & C. 639. In an action to recover for commission for the procuring of a loan, it is not enough to prove that the loan has indirectly, as a remote and casual consequence, resulted from the intervention of the party who sues; but it must be proved that the loan was obtained by means of his agency, or by means of some sub-agent of his, from the parties to whom he applied. *Antrobus v. Wickens*, 4 F. & F. 291. *Toppin v. Healey*, 11 W. R. 466—C. P. An auctioneer and estate agent was employed to sell an estate, under an agreement by which he was to receive a commission of two and a half per cent, "if the estate should be sold;" and "in case the estate should not be sold," he was to be paid 25*l.* as a compensation for his trouble and expense. Having put up the estate to auction, and failed to sell it, the agent, being asked by a person who had attended the sale who was the owner of the property, referred him to his principal; and ultimately that person, without any further intervention of the agent, became the purchaser:—*Held*, that the sale having been effected through the means of the agent, he was entitled to the stipulated commission. *Green v. Bartlett*, 14 C. B. N. S. 681; 32 L. J. C. P., 261; 8 L. T. N. S. 503. *De Vries v. Corner*, 13 L. T. N. S. 636—C. P. A. agreed to pay B. commission on the sale of an estate by public auction or otherwise; and if not sold, 25*l.* for expenses. At the sale by auction, there was no bid high enough to be accepted. C. was present, and had seen the advertisements issued by B., and afterwards agreed with A. for the purchase of the estate, but without any communication being made to B.:—*Held*, that B. was entitled to commission, and not to 25*l.* merely. *Green v. Bartlett*, 10 Jur. N. S. 78—C. P. If A. employs B. to procure him a loan on the usual terms, and B. employs C., who obtains it on other and different terms, A. will not be liable to C. either for commission or for remuneration, unless he ratifies these terms and recognises C.'s employment. *Mason v. Clifton*, 3 F. & F. 899. *Lara v. Hill*, 15 C. B. N. S. 45. A public company employed a broker to dispose of their shares, on the terms that he should be paid 100*l.* down, and 400*l.* in addition, upon the allotment of the whole of the shares of the company. The broker disposed of a considerable number of shares when the company was wound up:—*Held*, that the broker was prevented earning the 400*l.* by the act of the company, and was therefore entitled to recover a proportion of the 400*l.* *Inchbald v. Western Neilgherry Coffee Company*, 34 L. J. C. P. 15.

[2] In an action against a broker for entering into a contract as an agent for sellers, without authority, the sellers' letters to their agent are admissible, to show the want of authority. *Hughes v. Græme*, 3 F. & F. 885. A usage in the wool trade in Liverpool, that, when a broker is employed to buy wool, he may either contract in the name of his principal, or, at the request of the seller, may (without communicating the fact to his principal) make himself personally responsible for the price, is a good and reasonable usage. *Cropper v. Cook*, 3 L. R. C. P. 194; 17 L. T. N. S. 603. See *Deslandes v. Gregory*, 2 E. & E. 602,—Ex.

[3] A person who carries on the business of a factor and commission agent, and who has obtained goods from a manufacturer upon a representation that he has a customer for them, and who was to deliver them over to the purchaser, is a factor within 6 Geo. 4, c. 94, s. 4, and a contract with him whereby the goods are sold to a third party is a good and valid contract. *Baines v. Swainson*, 32 L. J. Q. B. 281; 4 B. & S. 270. Pictures were deposited by the defendant with J. (whose ordinary business was that of an agent for procuring business for two insurance offices in Liverpool), with instructions then or subsequently given to sell them for him for a certain commission:—*Held*, that J. was an "agent entrusted with the possession of goods," within the 5 & 6 Vic. c. 39, and consequently that the defendant was bound by a contract of pledge *bonâ fide* made with him. *Heyman, or Hayman v. Flewker*, 13 C. B. N. S. 519; 9 Jur. N. S. 895; 32 L. J. C. P. 132. *Jewan v. Whit-*

IX. Ratification, Termination, or Revocation of the Agent's Authority.[1]

X. Of Actions and Proceedings connected with.[2]

PRINCIPAL and SURETY. 6 Abr. 236. *See* also Guarantee.

I. Of the Nature and Extent of the Obligation of the Surety, p. 368.

worth, 36 L. J. C. P. 40. But certificates of railway stock are not goods within the meaning of the 5 & 6 Vic. c. 39. *Freeman v. Appleyard*, 32 L. J. Exch. 175. An agent entrusted with goods for sale cannot make a valid pledge under the Factory Act after his authority has been revoked. *Fuentes v. Montis*, 38 L. J. C. P. 95; 4 L. R. C. P. 93.

[1] If a principal ratifies the purchase by his agent of a chattel which the vendor had no right to sell, he is guilty of a conversion, although at the time of the ratification he had no knowledge that the sale was unlawful. *Hilbery v. Hatton*, 2 H. & C. 822; 33 L. J. Ex. 190; 10 L. T. N. S. 39. *Hawley v. Sentance*, 7 L. T. N. S. 745—C. P. A., being the owner of a house, No. 17, employed B. to sell it. The plaintiff viewed No. 7 with a card obtained from B., and paid B. a deposit on the purchase of No. 7, but, under a misapprehension, signed an agreement drawn up by B. for the purchase of No. 17; and then finding that under it he would acquire, not No. 7, but No. 17, applied to B. for repayment of his deposit, which A., by letter, authorised B. to make:—*Held*, that there was evidence for a jury of a ratification by A. of B.'s authority. *Benham v. Batty*, 13 W. R. 636; 12 L. T. N. S. 266—C. P. Mere advances made by a factor, whether at the time employed as such or subsequently, cannot have the effect of altering the revocable nature of an authority to sell, unless the advances are accompanied by an agreement that the authority shall not be revocable. *De Comas v. Prost*, 2 Moore, P. C. C. N. S. 158. J., carrying on business at one place, and having a branch establishment at another, placed the latter under the management and superintendence of B., as his agent. The branch business was carried on in the name of "B. and Co.," but B. had no authority to accept bills. B. having nevertheless exceeded his authority by the acceptance of a bill of exchange:—*Held*, that J. was liable thereon, it not being in his power to divest his agent, by any secret reservation, of the powers incidental to the character of principal, which he had empowered him to assume. *Edmonds v. Bushell*, 12 Jur. N. S. 332,—Q. B. The plaintiff having sent horses to a licensed horse-dealer for sale in the horse-dealer's own name, the dealer sold the horses, in his own name, to the defendant. The plaintiff, unknown to the defendant, revoked the dealer's authority to sell, or receive the price; and the defendant afterwards paid the dealer:—*Held*, that unless he had received notice of the revocation of authority, the payment was good as against the plaintiff. *Curlewis v. Birkbeck*, 3 F. & F. 894.

[2] It is settled law that an undisclosed principal can sue in respect of a contract entered into in his behalf between stock-brokers, though by the rules of the Stock Exchange the brokers, as between themselves, are personally responsible. *Langton v. Waite*, 37 L. J. Ch. 345; 18 L. T. N. S. 880; 6 L. R. Eq. 165. An auctioneer may sue in his own name when there is evidence from which it may be inferred the contract was with the auctioneer himself. *Fisher v. Marsh*, 11 Jur. N. S. 795; 34 L. J. Q. B. 177; 12 L. T. N. S. 604. To an action by a principal for goods sold and delivered, defendant pleaded set-off against plaintiff's factor, and averred that at the time of the sale, &c., defendant had no means of knowing and did not know that the goods were plaintiff's, or that the factor was his agent:—*Held*, bad, for not averring that defendant believed the factor to be the principal, or that he was not aware that he was a factor. *Semenza v. Brinsley*, 34 L. J. C. P. 161. Plaintiff and defendants were desirous of starting a company, to take plaintiff's premises and stock-in-trade. Plaintiff sent a written proposal to defendants for the sale of his extra stock, and defendants sent plaintiff a written acceptance thereof; the proposal was directed to and accepted by defendants "on behalf of the proposed G. R. A. H. Co. (Limited)." The company was not then in existence:—*Held*, that as the company was non-existent at the time of the agreement, defendants were personally liable, and that parol evidence was inadmissible to show a contrary intention. *Kelner v. Baxter*, 37 L. J. C. P. 94. A secretary of an insurance company was in the habit of purchasing shares of the company on his own behalf, and in some instances of selling them again; and also in some instances of selling shares for friends, but not charging commission:—*Held*, that he was not liable to be made a bankrupt either as a "broker," as "using the trade of merchandise, &c.," or as buying and selling "goods or commodities," these latter words not applying to shares. *In re Cleland*, 2 L. R. Ch. Ap. 466. Letters written by agent to principal are not evidence against third parties after the agent's death. *Smith v. Blakey*, 36 L. J. C. P. 456. As to action on guarantee given by agent, *Barwick v. English Joint-stock Bank*, Ex. Ch.; 2 L. R., Ex. 259; 36 L. J. 147.

II. Of the Discharge of the Surety, p. 368.

III. Rights and Remedies of the Surety, p. 368.

I. Of the Nature and Extent of the Obligation of the Surety.[1]

II. Of the Discharge of the Surety.[2]

III. Rights and Remedies of the Surety.[3]

PRISON and Prisoners.[4] 6 Abr. 244. As to Religious Instruction, *see* 26 & 27 Vic. c. 79.

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[1] Where a principal is appointed to two distinct employments, and his sureties guarantee by one bond his good conduct in both, they are not discharged from liability as to one of the employments by the fact of his duties being altered and enlarged in the other. *Bonar v. Macdonald*, 3 H. L. C. 226; S. C. 14 Jur. 1077; and *Pybus v. Gibb*, 6 El. & Bl. 902; S. C. 3 Jur. N. S. 315. *Skillett v. Fletcher*, 12 Jur. N. S. 295,—C. P.; 2 L. R. 469; 36 L. J. C. P. 206. *Harrison v. Seymour*, 1 L. R. C. P. 518; 12 Jur. N. S. 924; 35 L. J. C. P. 264.

[2] Mere negligence, even if gross, on the part of a creditor, unaccompanied by positive acts of concurrence in the defalcation of a debtor, will not discharge the surety, and is no ground of equitable defence. *Madden v. M'Mullen*, 13 Ir. Com. Law Rep. 305. *See Strange v. Fooks*, 9 Jur. N. S. 943. C. executed a bond as surety to an insurance company for the fidelity of A., who was appointed an agent of the company at Adelaide, and was about to, and afterwards did, enter into partnership with B., also an agent of the company at that place. The condition of the bond was, that if A. should well and truly pay and account, &c.:—*Held*, that the surety was not responsible under this bond for monies received by the firm of A. and B., notwithstanding he was aware at the time he signed the bond that A. was about to become partner with B. *Montefiore v. Lloyd*, 15 C. B. N. S. 203; 9 L. J. N. S. 330; 33 L. J. 49. *Bailey v. Edwards*, 33 L. J. Q. B. 161; 12 W. R. 337; 9 L. T. N. S. 646. *Union Bank of Manchester v. Beech*, 3 H. & C. 672; 34 L. J. Exch. 133; 13 W. R. 922; 12 L. T. N. S. 499. The plaintiff was the endorsee of certain bills accepted by the defendant for the accommodation of the drawer. After they became due the plaintiff agreed with the drawer that in consideration of his giving the plaintiff a freehold mortgage and other debts, the bills should be delivered up to be cancelled. The security was given accordingly. In an action against the acceptor:—*Held*, that he could not recover upon the bills, as he had given time to the drawer by the execution of the mortgage security, and thus had discharged the surety, who had an equitable defence to the claim. *Ewin v. Lancaster*, 12 L. T. N. S. 632. *See Russel v. Tricket*, 13 L. T. 280. *Bailey v. Edwards*, 4 B. & S. 76. A concealment of material facts from a surety may be sufficient to support a plea of fraud. *Lee v. Jones*, 8 L. T. N. S. 316—C. P. The defendants were sureties for the repayment, by weekly instalments, of money borrowed by A. of a loan society. One of the rules provided "that if any member becomes more than four weeks' payments in arrear the committee immediately inform the sureties of the same, and have power to institute legal proceedings against them." A. died, being more than four weeks' payments in arrear, but no application was made to the sureties until two years afterwards:—*Held*, that the rule was no part of the contract between the society and the sureties, and that the omission to give notice in pursuance of it did not afford an equitable defence to an action against the sureties. *Price v. Kirkham*, 3 H. & C. 437; 11 L. T. 314—Ex. *Wright v. Hickling*, 30 L. J. C. P. 40. A transaction which would otherwise operate as a release of a surety, such as giving time to the principal debtor, will not have that effect, either at law or in equity, if the remedy against the surety is expressly reserved. *Boaler v. Mayor*, 19 C. B. N. S. 76; 34 L. J. C. P. 230; 12 L. T. N. S. 457.

[3] A surety is not entitled to have an assignment of the principal security unless he pays the debt in full. *Ewart v. Latta*, 4 Macq. H. L. C. 983. *Drew v. Lockett*, 9 Jur. N. S. 786. A surety being entitled to all collateral securities, the creditor is bound to preserve them, and if through his negligence they are lost, the surety is discharged. *Strange v. Fooks*, 4 Giff. 408. *Cooper v. Jenkins*, 32 Beav. 337. A co-surety having paid the debt to the judgment creditor, is entitled to take the debtor in satisfaction, although he had been discharged under a former *ca. sa. Edmonds v. S. B.*, 3 F. & F. 962.

[4] The 5 & 6 Vict. c. 22, s. 14, providing that lunatic prisoners are to be removed to

PRIVATE Acts. *See post*, Statutes.

PRIVILEGED Communications. *See* Libel; Slander.

PRIVY Council.[1] 6 Abr. 251.

PRIVY Seal. 6 Abr. 252.

PRIZE[2] **and Prize-Money.**[3] 6 Abr. 252. *See* 27 & 28 Vic. c. 18, ss. 23, 24, 25, 36.

PROBABLE Cause. *See* Arrest; Prosecution.

PROBATE. 6 Abr. 253. *See* also Administration; Executors and Administrators: Will; Stats. 20 & 21 Vic. c. 77; 21 & 22 Vic. c. 95; (alt. stp. du.), 22 & 23 Vic. c. 36; 25 & 26 Vic. c. 22. Coote and Tristram, Probate Court Practice; Dodd and Brooke, *id.*

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II. Of what Testamentary Instruments Probate will be Granted, p. 370.

III. To whom Probate may be Granted, p. 371.

IV. Practice, Pleadings, and Procedure in Testamentary Causes, p. 371.

V. Of the Hearing, Trial, Compromising Suits, and New Trials, p. 372.

VI. Of Decrees and Attachments, p. 373.

Bethlehem Hospital on a warrant of one of the secretaries of state, is inconsistent with, and therefore repeals, the provisions contained in the Insolvent Debtors' Act, 1 & 2 Vic. c. 110, s. 102, relating to lunatic prisoners, and the provisions of the former act are not affected or altered by 8 & 9 Vic. c. 100, and the 16 & 17 Vic. c. 96. *Gore v. Gay*, 33 L. J. C. P. 109; 9 L. T. N. S. 693. By 52 Geo. 3, c. 209, Newgate is made a prison for the reception of criminal offenders only; therefore a person committed by civil process cannot be detained there. *Masters, Ex parte*, 9 L. T. N. S. 733. A crowbar is an "article or thing" within the meaning of section 37 of the Prisons Act, 1865, and therefore any person who, with intent to facilitate the escape of any prisoner, conveys such an instrument into any prison is guilty of felony under that section. *R. v. Payne*, 35 L. J. M.C. 170.

[1] Any solicitor, attorney, or proctor who shall be entitled to practise in the superior courts, shall be entitled to practise in any appeal to Her Majesty in Council in any ecclesiastical or maritime cause. The Judicial Committee is reluctant to admit an appeal in criminal cases. *Falkland Islands Company v. Reg.* 1 Moore, P. C. C. N. S. 299; 10 Jur. N. S. 807. *Reg. v. Joykissen Mookerjee*, 9 Moo. Ind. App. 168; 1 Moore, P. C. C. N. S. 272. *Reg. v. Bertrand*, 1 L. R. P. C. 520. *Levien v. The Queen*, 1 L. R. P. C. 536; 36 L. J. 62. The Privy Council refused to hear the appeal until a printed case was lodged. *Bengal Government v. Mussumat Shurruffutoonnissa*, 8 Moo. Ind. App. 225. *Smith v. Cresswell*, 10 L. T. N. S. 672—P. C. On an issue involving a question of fact, tried by a jury, the Privy Council will not reverse the finding of the jury unless (1) anything material has been admitted as evidence which was not legal evidence, (2) anything material has been tendered as evidence and rejected which ought to have been received, or (3) misconduct on the part of the jury. *Cowin v. Moore*, 14 Moore, P. C. C. 354. The Council is not precluded from entertaining a petition to rescind leave to appeal on the ground of want of jurisdiction, by the fact that leave to appeal was granted by a colonial court under the authority of a colonial statute. *Macfarlane v. Leclaire*, 15 Moo. P. C. C. 181. *Gobund Chunder Sein v. Ryan*, 9 Moo. Ind. App. 140.

[2] Sentences of foreign prize-courts are conclusive evidence in actions on policies of insurance on every subject properly within their jurisdiction, and have professed to decide judicially. *Hobbs v. Henning* or *Heming*, 17 C. B. N. S. 791; 11 Jur. N. S. 223.

[3] The enactment as to booty, that the court "shall proceed as in cases of prize of war" refers only to the course of procedure, and not to the distribution of booty. *The Banda and Kirwee Booty*, 35 L. J. Ad. 17; 1 L. R. 10 J. Ex. 107. In cases of booty the actual captors, though they may institute the suit, are plaintiffs only in name, as the burden of proof rests with those claiming a right to share in the booty. *The Banda and Kirwee Booty*, 35 L. J. Ad. 11; 14 L. T. 293. 26 & 27 Vic. c. 116, regulates the appointment of navy prize-agents, their duties, and remuneration.

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VIII. Jurisdiction of County Court, p. 374.
IX. Of the Renunciation of Probate, p. 374.
X. Of Stamp Duty on and Proof of Probate, p. 374.

I. Of the Jurisdiction of the Court.[1]

II. Of what Testamentary Instruments Probate will be Granted.[2]

[1] The court has no authority to inquire into the validity or invalidity of the will of a sovereign of this realm. *George III., In Goods of*, 3 S. & T. 199. A suit was instituted respecting the succession to the personal estate of a deceased, who was domiciled abroad:—*Held*, that a judgment of the court of the domicil is conclusive as to the nationality of the parties, and in relation to the same succession. The court has no jurisdiction to inquire whether such a judgment is in conformity with the law of the country where it was pronounced. *Doglioni v. Crispin*, 1 L. R. H. L. 391; 35 L. J. Prob. 129; 14 L. T. N. S. 44—H. L. Where a testamentary cause is commenced in the Court of Probate, but that court sends the cause to a county court, the Probate Court has no jurisdiction to entertain an application for a new trial. *Zealley v. Veryard*, 1 L. R. P. & D. 195. But see *In the Goods of George Earl*, 36 L. J. P. & M. 127. The court will make a grant to a provisional executor, appointed by the court, of the domicil, but it will limit it for such time as the appointment by the court of domicil remains unrescinded. *Steigerwald, In Goods of*, 10 Jur. N. S. 159—Prob. Where a testator has left two wills, one limited to property in England, the other to property in a foreign country, and the court has granted probate limited to the property in England, it will not grant probate of the foreign will to the executors thereof, none of the foreign property having come to this country. *In the Goods of Cood*, 36 L. J. P. & M. 129. Will limited to property abroad is not entitled to probate here. *In the Goods of Cosnahou*, 3 L. J. P. & M. 76.

[2] The rule is, that where a will has been lost (*à fortiori*, destroyed) the court will not grant probate in common form, but put the party propounding to prove it in open court; but this rule may be departed from where the evidence is very clear and satisfactory. *Colman v. Colman*, 13 L. T. N. S. 682. *Burks v. Burks*, 36 L. J. M. & P. 125. Probate will not be granted on motion of a draught of a will which has been intentionally destroyed. *Body, In Goods of*, 34 L. J. Prob. 55. *In the Goods of Greig*, 35 L. J. P. & M. 113. When the substance of a will is propounded, the first point to be ascertained is whether such a will was duly executed. If that is established, the next point is whether it was in existence at the death of the deceased. If it was not, then the *primâ facie* presumption that it was destroyed by the deceased with intention to revoke arises; which may be rebutted by further evidence. *Podmore v. Whatton*, 10 L. T. N. S. 754—Prob; 33 L. J. Prob. 75. In decreeing probate of the contents of a destroyed will, the court condemned in costs a defendant who had destroyed the will, although he had not entered an appearance. *King v. Gillard*, 37 L. J. P. & M. *In the goods of Barber*, 36 L. J. P. & M. 19. A. wrote and signed a testamentary paper, which commenced, "In the prospect of a long journey, should God not permit me to return, I make this my last will." He made the journey and returned home, and subsequently executed this paper, by acknowledging his signature in the presence of two witnesses:—*Held*, it ceased to be conditional, and must be admitted to probate. *Cawthron, In Goods of*, 10 Jur. N. S. 51. The deceased executed on the same day three indentures, described as deeds of gift:—*Held*, that, as it appeared from the contents that they were to take effect only on the death of the deceased, they ought to be admitted to probate as containing the will of the deceased. *In the Goods of Morgan (deceased)*, 35 L. J. M. P. 98. *In the Goods of Sibthorp*, 35 L. J. P. & M. 73. Probate will not be granted upon motion of the will of a deaf and dumb testator, who can neither read nor write, and who converses by signs, unless the nature of the signs by which he signifies his knowledge and approval of the contents are stated upon affidavit. *Geale, In Goods of*, 33 L. J. Prob. 125. The testamentary character of a paper writing may be proved by parol evidence. *English, In Goods of*, 34 L. J. Prob. 5. *Guardhouse v. Blackburn*, 1 L. R. P. & D. 109. *In the Goods of Cattrall*, Prob. Sw. & Trist. 419. *In the Goods of Martha Woods*, 37 L. J. P. & M. 23; 17 L. T. 583; 16 W. R. 407. A duly executed paper, testamentary on the face of it, is not entitled to probate, if it is clearly proved, by parol evidence, that it was executed by the testator without any intention that it should affect the disposition of his property after death. *Lister v. Smith*, 9 L. T. N. S. 578—Prob. *Matthias, In Goods of*, 3 S. & T. 100; 9 Jur. N. S. 630; 32 L. J. Prob. 115; 8 L. T. N. S. 471. *Graham, In Goods of*, 3 S. & T. 69; 32 L. J. Prob. 113; 11 W. R. 638; 8 L. T. N. S. 610. Where all the parties interested in a testamentary paper have been cited to

III. To whom Probate may be Granted.[1]

IV. Of the Practice, Pleadings, and Procedure in Testamentary Causes.[2]

propound it, if they should think fit, and have not appeared to do so within the time limited in the citation, the court will treat such paper as invalid. *Morton v. Thorpe*, 9 Jur. N. S. 728; 32 L. J. Prob. 174. Where a declaration propounding a will depends on the due execution according to the law of testator's domicil, it must contain a distinct averment that it was duly executed according to the law of the domicil. An averment that the will was admitted to probate by a competent court of the alleged domicil is insufficient. *Isherwood v. Cheetham*, 2 S. & T. 607. *Raffenel, In Goods of*, 3 S. & T. 49; 9 Jur. N. S. 386; 32 L. J. Prob. 203; 11 W. R. 549; 8 L. T. N. S. 211. A direction in a will, that out of a particular fund A. shall pay the debts and funeral expenses of the testator, does not constitute A. executor according to the tenor, even though the testator states that such fund is all the property of which he is possessed. *Toomy, In Goods of*, 34 L. J. Prob. 3. In order that an unexecuted paper writing may be incorporated in a will, it must be so described in the will as to leave no doubt in the mind of the court that it is the paper writing referred to. *Brewis, in Goods of*, 10 Jur. N. S. 593; 33 L. J. Prob. 124. A will, after its execution, was retained by the testator in his own custody, but at his death it could not be found. To rebut the presumption of law that the will had been destroyed, evidence was received of certain declarations made by the deceased up to within a few days of his death. *Whiteley v. King*, 10 Jur. N. S. 1079; 13 W. R. 83; 11 L. T. N. S. 342, C. P.

[1] When a British subject dies abroad, after 24 & 25 Vic. c. 114, leaving a will executed in England in accordance with the law of England, upon motion for probate it is not necessary to consider whether he had or had not acquired a foreign domicil. *Rippon, in Goods of*, 32 L. J. Prob. 141; 9 L. T. N. S. 117; 3 S. & T. 177. Where executors, duly appointed by the decree of a foreign court apply for probate, and the original will, which, according to the practice of the foreign court, forms part of the probate, was produced at the Registry, probate will be granted upon leaving a certified copy of the original will and the probate. *In the Goods of Felix Clarke*, 36 L. J. P. & M. 72; 15 W. R. 881. The court will not investigate critically whether the facts proved establish the capacity of a married woman to execute a power by will; but if the will has been duly executed, and there appears a *bonâ fide* question as to the existence of a power, of which the will may turn out to be a good execution, the court will grant probate. *Paglar v. Tongue*, 1 L. R. Prob. & Div. 158. *See Coward, in Goods of*, 11 Jur. N. S. 569; 34 L. J. Prob. 120; 13 L. T. N. S. 210. *Webb, in Goods of*, 10 Jur. N. S. 709; 33 L. J. Prob. 182; 11 L. T. N. S. 277. Where a citation has not been duly served on a married woman, the court will act upon a renunciation subsequently executed by herself and husband. *Herbert v. Sheill*, 3 S. & T. 479. A domiciled Portuguese by his will appointed A. and B. his executors in Portugal, and C. and D. his executors in England:—*Held*, that as one of the latter executors was resident in Portugal, the words "in England" and "in Portugal" were equivalent to "for England" and "for Portugal" respectively. *Velho v. Leite*, 33 L. J. Prob. 107. *Wallich, in Goods of*, 33 L. J. Prob. 87; 9 L. T. N. S. 809. Where a will duly executed contains simply an appointment of a guardian of his children by a father, but no disposition of personal property, or an appointment of an executor, it is not entitled to probate. *Morton, in Goods of*, 33 L. J. Prob. 87; 12 W. R. 320. Testator appointed A., an officer in the navy, his executor, "and in case of his absence on foreign duty," he appointed B. his executrix. When the testator died, A. was in England, but shortly afterwards he went abroad on foreign service, and still remained abroad:—*Held*, that B. was entitled to probate as substituted executrix. *In the Goods of Langford*, 37 L. J. P. & M. 20. D. on 3rd January, 1853, devised all his real and personal estate to P., and appointed him "sole executor." In March, 1862, by a paper purporting to be his last will, he bequeathed two houses to G., and made G. "sole executor of this my will:"—*Held*, that the two executors were jointly entitled to probate of both papers. *Geaves v. Price*, 32 L. J. Prob. 113; 3 S. & T. 71. *In the Goods of Chappell*, 37 L. J. P. & M. 32. *Lane, in Goods of*, 33 L. J. Prob. 185.

[2] By 29 & 30 Vic. c. 64, s. 16, all letters or powers of attorney and proxies filed in the Courts of Probate in England and Ireland respectively are declared to be exempt from all stamp duty. A party propounding a will may put any person opposing it on proof of his interest; but where two parties oppose a will, *e. g.* the Queen's proctor and an alleged next of kin, neither can put the other on proof of his interest. *Hingeston v. Tucker*, 2 S. & T. 596; 7 L. T. N. S. 337. Being cited to propound and prove a will is a distinct matter from being cited to take probate under 21 & 22 Vic. c. 95, s. 16. *Bewsher v. Williams*, 3 S. & T. 62; 11 W. R. 541; 8 L. T. N. S. 290, *n.* Where an executor propounds the latter of two wills, the court will direct a citation to issue against the devisees under the earlier will, and against the heir-at-law, though already before the court, as defendant in the suit. *Lister v. Smith*, 3 S. & T. 53. In contentious proceedings the party propounding a will is not bound to call both the attesting witnesses. *Forster v. Forster*, 33 L. J. Prob.

V. Of the Hearing, Trial, and of Compromising Suits and New Trials.[1]

113. The Probate Court will not stay proceedings till heir-at-law brought an ejectment. *Ireland v. Rendall*, 35 L. J. P. & M. 77; *Moore v. Holgate*, 1 L. R. Prob. 101; 35 L. J. Prob. 46; 14 W. R. 515; 14 L. T. N. S. 24. But see *Peacock v. Lowe*, 15 L. T. N. S. 634, Prob. The court will not, on the application of a party who has cited executors to prove a will in solemn form, order the attesting witnesses to attend to be examined in open court as to their knowledge of the will, although they may have refused to give information. *Evans v. Jones*, 36 L. J. P. & M. 70. When a party is cited by advertisement, and has no agent in this country, there should be an affidavit that he has no attorney, agent, or correspondent in this country. *Kenworthy v. Kenworthy and Watson*, 3 S. & T. 64; 32 L. J. Prob. 107; 8 L. T. N. S. 470. An affidavit of service of a citation should identify the citation served; the citation should be made an exhibit to the affidavit. *Harence v. Dawson*, 3 S. & T. 50; 32 L. J. Prob. 94. Citation may be amended upon payment of the defendant's costs up to the time of the amendment, exclusive of the costs of entering an appearance. *Ridgway v. Abingdon*, 3 S. & T. 3; 11 W. R. 10; 7 L. T. N. S. 756. A. in the oath for executrix, described herself as of, &c. "the lawful widow and relict of the deceased," without any other addition. The court held sufficient, and the affidavit received. *Morgan, In Goods of*, 32 L. J. Prob. 139; 11 W. R. 749; *King, In Goods of*, 2 S. &. T. 621; 32 L. J. Prob. 14; 11 W. R. 171. *Semble*, that when necessary the party propounding testamentary papers will be ordered to give particulars as to the papers he intends to set up. *Marsh v. Corry*, 10 Jur. N. S. 159; 33 L. J. Prob. 112. When a will which has been destroyed is propounded, it is not necessary to set out the substance of the will, or to allege its destruction in the declaration. *Glen v. Burgess and Gover*, 3 S. & T. 43; 32 L. J. Prob. 157; 8 L. T. N. S. 174; but should, if possible, assign a particular date to the will. In a testamentary suit, one of the attesting witnesses being resident in New Zealand, the court ordered the original will to be transmitted to that country, attached to the commission for the examination of such witness. *Forster v. Forster*, 10 Jur. N. S. 594; 33 L. J. Prob. 113. A commission for the examination of a witness in a distant colony will authorise the commissioners to act jointly or severally. *Ib.* The court will allow affidavits in reply to be read at the hearing if the court consider that the affidavits to which they are in reply necessitated an answer. *Cordeux v. Trasler*, 34 L. J. N. S. 127. A declaration on oath received instead of an affidavit, the person making it being resident abroad, where an affidavit could not be made. *Lambert, In Goods of*, 1 L. R. Prob. 138; 14 L. T. N. S. 227. The court will allow affidavits in reply to be read at the hearing of a cause if it thinks such affidavits are necessary. *Cordeux v. Trasler*, 4 S. & T. 48. An affidavit of search and of non-appearance should state the day on which the search was made. *Harence v. Dawson*, 3 S. & T. 50; 32 L. J. Prob. 94. Where two persons have been cited, and neither has appeared, it should state that no appearance has been entered by or on behalf of either of them. *Ib.* Leave to introduce a new plea after issue joined will not be given, unless affidavits in support of the motion disclose such facts, as, if proved in evidence, would warrant the plea. *Twels v. Clarke*, 3 S. & T. 280; 33 L. J. Prob. 49; 9 L. T. N. S. 658. If at the trial evidence of such facts were to be given, the court would allow a corresponding plea to be added to the record, if it could be done without injury to the other party. *Ib. Semble*, a plea of "not the will of the deceased," means that the deceased signed the paper without intending it to operate as a testamentary instrument. *Ib.* A plea to a declaration propounding a will that the will "was not the will of the deceased," is bad for ambiguity. *Owen v. Davis*, 33 L. J. Prob. 201; 13 W. R. 88. Under a plea that a paper propounded is "not the will of the deceased," evidence of undue execution, or incapacity, is not admissible. The meaning of that plea is, that the deceased did not execute the paper intending that it should operate as his will. *Cunliffe v. Cross*, 32 L. J. Prob. 68. Leave to withdraw a plea to which there has been a demurrer, will not be granted except upon payment of costs. *Hawke v. Hawke and Wegg*, 32 L. J. Prob. 132. The court will not make an order as to the mode of trial of a cause unless all the pleadings have been regularly filed in the registry. *Isaacks v. Whaley*, 11 W. R. 549, Prob. Where a party takes no step on an order to join in demurrer within a given time, the party demurring is at the expiration of the time entitled to judgment on the demurrer. *Wells v. Wells*, 2 S. & T. 607. An intervener may plead after issue joined by leave of the court. *Jones v. Williams*, 11 Jur. N. S. 288; 34 L. J. Prob. 102. The court has power, under 20 & 21 Vic. c. 77, s. 36, to order a party to the suit to file an affidavit setting out what letters written to or by the deceased, or by his direction, are in the custody or under the control of such party. Discovery is a purpose auxiliary to the trial of a question of fact. *Hunt v. Anderson*, 37 L. J. P. & M. 27. Court may order any document sufficiently described and shown to be material, to be brought into court. *Peacock v. Lowe*, 36 L. J. P. & M. 91.

[1] In order to save expense and delay, the court will generally allow issues in a testamentary suit to be tried at the assizes. *Ridgway v. Abington*, 32 L. J. Prob. 107;

VI. Of Decrees and Attachments.[1]

VII. Of the Costs.[2]

11 W. R. 500. But when the cause, from the nature of the issues of fact raised, is a more proper one to be tried before the court itself than by a jury, the court will, on the application of one of the parties, direct it to be heard without a jury, unless such application is opposed by the heir-at-law. *Quick v. Quick*, 33 L. J. Prob. 108; 3 S. & T. 460; *Beech v. Rathbone*, 35 L. J. Prob. 26. The Probate Court has no power to order an issue to be tried by a judge of assize, without a jury. The application for that purpose must be made to the judge of assize. *Bushell v. Blenkhorn*, 1 L. R. P. & D. 89. An executor having produced one of the attesting witnesses to the will in dispute, who failed from mental incapacity, to give a rational account of the time and manner of execution, called the second witness. The second witness deposed that the testator did not sign his name, or acknowledge his signature, in the presence of two witnesses present at the time:—*Held*, that though the second witness could not be considered a hostile witness, yet as he was produced to satisfy the requirements of the law, the party producing him might put questions to other witnesses tending to throw doubts upon his general credibility. *Coles v. Coles*, 37 L. J. P. & M. 40. Where a person opposing a will pleads that the will was not duly executed, and in capacity of the testator, and gives notice of his intention merely to insist on the will being proved in solemn form, and of merely cross-examining the witnesses in support, it is inconsistent with such notice afterwards to file a further plea of undue influence. *Ireland v. Rendall*, 1 L. R. P. & D. 194; 35 L. J. 79. When a suit is compromised before trial, the court will not make the terms of compromise a rule of court, as it has no power to enforce compliance with the terms; but it will make an order that the contentious proceedings be discontinued, and that the terms of compromise be filed in the registry. *Roadnight v. Carter*, 3 S. & T. 421; see *Hargreaves v. Wood*, 2 S. & T. 602. When a testamentary cause, in which a county court has jurisdiction, has been commenced in, or has been transferred to, a county court, the Court of Probate has no power to grant a new trial, or to make any order in the cause, unless it is brought before it by way of appeal. *Zealley v Veryard*, 1 L. R. Prob. 195; 35 L. J. Prob. 127; 14 L. T. N. S. 769. Where plaintiff in a testamentary suit dies after issues found in his favour and before grant of administration, there must be a suggestion of his death on the record before a grant can be made to his executors. *Jones v. Jones*, Prob. 36 L. J. 43.

[1] The 25th section of 20 & 21 Vic. c. 77, that the court shall have the like powers for enforcing its orders as are vested in the Court of Chancery, does not constitute an order of the Probate Court for payment of money a charge on land within 1 & 2 Vic. c. 110, s. 13. *Pratt v. Bull*, 1 De G. J. & Sm. 141; 9 Jur. N. S. 239; 32 L. J. Ch. 144. Where the heir-at-law successfully resists probate of a will of real estate, the Court of Probate has no jurisdiction to charge the real estate with the costs of the litigation. *Newton v. Newton*, 13 Ir. Ch. Rep. 245. Applications for writs of attachment, and also for writs of *fieri facias* and of sequestration, must be made to the judge by motion in court. R. 107. An attachment will not be granted against a married woman for disobedience of an order for payment of costs if she has no separate property. But the onus of establishing that fact lies upon her. *Parker v. Hick*, 3 S. & T. 436. An administrator in custody under an attachment, obtained by the persons entitled in distribution, for not filing an inventory, is not entitled to be discharged from custody upon his filing such inventory, except upon payment of costs. *Marshman v. Brookes*, 32 L. J. Prob. 95.

[2] An executor propounding testamentary paper without reasonable grounds, will be condemned in costs. *Clayton v. Davis*, 33 L. J. Prob. 28. *Rennie v. Massie*, 35 L. J. P. & M. 124. When the court pronounced for a will, but in its decree made no order as to costs, it subsequently amended its decree by ordering the costs of the legatee, to be paid out of the estate. *Bewsher v. Williams*, 3 S. & T. 62; 11 W. R. 541. An unsuccessful opponent of a will will not be condemned in costs if there was reasonable ground for his disputing the will, but he will not be entitled to his costs out of the estate. *Williams v. Henry*, 3 S. &. T. 471; 33 L. J. Prob. 110; *Clayton v. Davis—Hawkins, In Goods of*, 3 S. & T. 290; 10 L. T. N. S. 70. Failure to establish pleas of undue influence and fraud will, as a rule, be followed by condemnation in costs. *Ib. Barnard v. Burroughs*, 11 W. R. 241, Prob.; *Summerell v. Clements*, 3 S. & T. 35; 32 L. J. Prob. 33; 8 L. T. N. S. 172; *Tolland v. Stevenson*, 12 Jur. N. S. 300; 13 L. T. N. S. 609, Prob. In a case of doubt an executor should obtain security for costs from the parties interested. *Rennie v. Massie*, 1 L. R. P. & D. 118. Next of kin unsuccessfully opposing will on ground of testator's incapacity, not condemned in costs when opposition based on reasonable grounds. *Tappett v. Tappett*, 35 L. J. P. & M. 41; *Critchell v. Critchell*, 3 S. & T. 41; 32 L. J. Prob. 108; 11 W. R. 401; 8 L. T. N. S. 173; *Mitchell v. Gard*, 33 L. J. Prob. T. N. S. 491. As a general rule a defendant residing abroad will not be required to give security for costs. *Robson v. Robson*, 10 Jur. N. S. 1243; 34 L. J. Prob. 6; 11 L. T. N. S. 459; 3 S. & T. 548. *Semble*, however, that when the defendant

VIII. Jurisdiction of County Court.[1] *See* 20 & 21 Vic. c. 77; 21 & 22 *id.* c. 95. County Court Probate Rules.

IX. Of the Renunciation of Probate.[2]

X. Stamp Duty on, and Proof of Probate.[3]

PROCLAMATION.[4]

PROHIBITION.[5] *See* 6 Abr. 284.

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on the record is substantially plaintiff, he may, if resident abroad, be required to give security for costs. *Ib.* Cost of amendment, see *Archer v. Burke*, 21 L. J. P. & M. 30.

[1] When the judge is satisfied that the county court has jurisdiction, he will direct a cause to be tried before it, and will also direct the papers in that cause to be transmitted to the county court, but he will give no directions as to the mode in which the cause shall be tried. *Norris v. Allen*, 2 S. & T. 601; 7 L. T. N. S. 338. It will be for the judge of the county court to decide whether the cause shall be tried before him with or without a jury. *Ib.*

[2] The renunciation of an executor needs not be under seal. *Boyle, in Goods of*, 33 L. J. Prob. 109; 10 L. T. N. S. 541. When a person has renounced probate or administration in one character, he may be entitled to administration *de bonis non* in an inferior character, which did not exist when he renounced in the superior character. *Loftus, in Goods of*, 10 L. T. N. S. 240, Prob. Where before a judge of assize an agreement was made, one of the terms of which was that the executors, the defendants, should renounce probate:—*Held*, the judge of the Court of Probate could not properly enforce an agreement that any executors of a will should renounce probate. *Hargreaves v. Wood*, 2 S. & T. 602; 32 L. J. Prob. 8.; 7 L. T. N. S. 338; *in the Goods of Whitham*, 36 L. J. P. & M. 26. *Semble*, that an executor cannot retract his renunciation except for the purpose of taking probate. *Ib.* A. as one of the executors of the will of B., on the death of B., gave directions for the custody and management of his property. He subsequently executed a renunciation of the probate of the will of B., and probate was granted to another executor. The court declared the renunciation to be invalid. *Badenach, in Goods of*, 10 Jur. N. S. 521; 33 L. J. Prob. 179; 11 L. T. N. S. 275. The court received and acted on an informal deed of renunciation, which stated in substance, although not in terms, that the executor had not intermeddled. *Gibson, in Goods of*, 1 L. R. Prob. 105; 12 Jur. N. S. 344; 35 L. J. Prob. 114; 14 L. T. N. S. 23. The court will grant probate of a will which disposes of realty only if an executor be appointed therein, even although such executor renounces his rights under it. *In the Goods of Jordan*, 39 L. J. P. & M. 22.

[3] The stamp duty is to be calculated not only on the principal moneys which constituted the property at the time of the death, but also on the accumulations of interest between the death and the grant of letters of administration. *Atty.-Gen. v. Partington*, 3 H. & C. 193; 10 Jur. N. S. 825; 33 L. J. Exch. 281; 13 W. R. 54; 10 L. T. N. S. 751, Ex. Ch. The expression in 5 & 6 Vic. c. 79, s. 23, "debts payable by law out of personal estate" means such debts as in themselves, and in their own nature, are payable out of the personal estate, and has no relation to any provision a testator may make in his will for their payment. *Percival v. Reg.* 3 H. & C. 217; 10 Jur. N. S. 1059; 33 L. J. Ex. 289; 10 L. T. N. S. 622. Under 20 & 21 Vic. c. 77, s. 64, if notice of the intention of one party to give in evidence the probate of a will as proof of a devise of real estate, ten days before the trial, and within four days of the receipt of such notice a counter notice be not given that the validity of the devise is disputed, the probate in common form is not conclusive evidence of the validity of the devise. *Barraclough v. Greenhough*, 2 L. R. Q. B. 1; 36 L. J. Q. B. 26; 15 W. R. 21; 15 L. T. N. S. 157. But the plaintiff may be allowed to contest the validity. *Barraclough v. Greenhough*, 36 L. J. Ex. Ch. 251. *Semble*, that the notice should have been served upon the attorney or upon his agent, and not upon the opposite party. 36 L. J. *Ib.* The copy of a foreign will contained in the ancillary probate granted in this country to the foreign executors, is the only admissible evidence of the will. *Enohin v. Wylie*, 10 H. L. Cas. 1.

[4] The object of a royal proclamation is only to make known the existing law; it can neither make nor unmake the law. *Chevasse, Ex parte, in re Grazebrook*, 11 Jur. N. S. 406: 34 L. J. Bank. 17; 12 L. T. N. S. 249, C.

[5] Prohibition lies to a court of criminal no less than to one of civil jurisdiction. *Reg. v. Herford*, 3 El. & El. 115. The court will not interfere by prohibition, unless it is plain that the court against which the prohibition is prayed is exceeding, or is about to exceed, its authority. *Sinyanki, In re*, 10 L. T. N. S. 825, Q. B. Prohibition will not lie to a county court, however erroneous its decision, where there is jurisdiction. *Norris v. Carrington*, 16 C. B. N. S. 396. As to granting, to P. & M. Court, see *Forster v. Forster and Berridge*, 32 L. J. Q. B. 312; 4 R. & S. 187; 8 L. T. N. S. 661. Material delay is a bar to a writ of prohibition issuing to a county court. *Denton v. Marshall, In re Denton*, 1 H. & C. 654; 9 Jur. N. S.

PROMISSORY Notes. 2 Abr. 200, *ante*, Bills and Notes.

PROPERTY and Income Tax. *See* 32 & 33 Vic. c. 14.

PROSTITUTION.[1]

PROTEST. 2 Abr. 473. *See ante* Bills and Notes.

PROVIDENT Societies. 4 Abr. 559. *See* Friendly Societies, *ante*.

PUBLIC Company. *See* Bank and Banking; Corporation; Joint-Stock Company; Railway.

PUBLIC HEALTH. 6 Abr. 290.

I. Board of Health.

(A) *Statutes relating to*, p. 375.

(B) *Construction of*, p. 376.

(C) *Constitution and Proceedings of Board, Qualifications of Members, and seal of Board*, p. 376.

(D) *Powers and Liabilities of Boards and their Officers*, p. 376.

(E) *Bye-Laws*, p. 377.

(F) *As to Sewage Matter and Sewers. See* Sewers, *post.*

(G) *As to Drains, Ditches, &c.* p. 377. *See* also Drainage, *ante*, p. 174.

(H) *As to Management, and Cleansing of Streets, &c.*, p. 378.

(I) *As to Regulations of Buildings*, p. 378.

(J) *As to Lodging-Houses*, p. 378.

(K) *As to Water Supply*, p. 378.

(L) *As to Offensive Trades, Slaughter-Houses, Sale of Meat, &c.*, p. 378.

(M) *As to prevention of Smoke, and putting out Fires*, p. 379.

(N) *As to Burials. See* Burial, *ante*, p. 87.

(O) *As to Highways*, p. 379.

II. Nuisances, and their Abatement and Removal, p. 379.

III. Prevention of Diseases, p. 379.

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I. Board of Health.

(A) *Statutes relating to.*[2]

337; 32 L. J. Exch. 89; 7 L. T. N. S. 689. And its being too late, is not cured by notice of the intention to apply for it being given in due time. *Ib.* After judgment satisfied, it is too late to issue a writ of prohibition. *Ib.* The 1 Will. IV. c. 21, s. 1, makes it "lawful for the jury to assess damages in prohibition;" yet costs incurred by a plaintiff in his defence to the suit in the inferior court, are not recoverable as damages. *White v. Steele*, 13 C. B. N. S. 231; 9 Jur. N. S. 648.

[1] Although common prostitution is not an indictable offence, yet it is unlawful; and an indictment for conspiring to solicit and incite an unmarried girl to become a common prostitute, and soliciting and inciting her accordingly, is an indictable offence. *Reg. v. Simeon and Howell*, 4 F. & F. 160.

[2] 11 & 12 Vic. c. 63; 17 & 18 *ib.* c. 95;

(B) *Construction of Statutes.*[1]

(C) *Constitution and Proceedings of Board, Qualifications of Members, and Seal of Board.*[2] *See* 18 & 19 Vic. c. 121, ss. 3 to 11.

(D) *Powers and Liabilities of Boards and their Officers.*[3]

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18 & 19 *ib.* c. 121; 21 & 22 *ib.* cc. 97, 98; 27 & 28 *ib.* c. 3; 29 & 30 *ib.* c. 90; 31 & 32 *ib.* c. 115; 32 & 33 *ib.* c. 70.

[1] Sect. 2 of the 11 & 12 Vic. c. 63, defines a justice to be "a justice acting for the place in which the matter requiring the cognizance of the justice arises:"—*Held*, that this, in a county, meant a justice acting within the petty sessional division in which the matter arises; and therefore that justices of the county, not acting within the petty sessional division of it in which the offence under sect. 148 had been committed, had no jurisdiction to convict under sect. 129. *Reg. v. Brodhurst*, 32 L. J. M. C. 168; 11 W. R. 425, Q. B. Under sect. 54 of 11 & 12 Vic. c. 63, a discretion is vested in a local board of health to determine what works are necessary to be done, and justices at petty sessions have no jurisdiction to review the determination of the local board upon such a subject. *Hargreaves v. Taylor*, 9 Jur. N. S. 1053; 32 L. J. M. C. 111; 11 W. R. 562; 8 L. T. N. S. 149, Q. B. *See Felkin v. Berridge*, 15 C. B. 257.

[2] An election of members of a local board of health, under the 11 & 12 Vic. c. 63, ss. 21, 27, conducted by the statutory assistants of the chairman during his absence, and which is certified by him solely upon their report, is null and void. *Reg. v. Backhouse*, 2 L. R. Q. B. 16; 36 L. J. Q. B. 7; 15 L. T. N. S. 240. A chairman of a local board is required by 11 & 12 Vic. c. 63, s. 24, to cause voting papers of a certain form to be prepared and filled up. *Held*, that the omission to fill up blanks, did not render the election illegal, but merely subjected the chairman to a penalty. *Reg. v. Lofthouse*, 1 L. R. Q. B. 433; 12 Jur. N. S. 619; 35 L. J. Q. B. 145; 14 W. R. 649; 14 L. T. N. S. 359. Under 11 & 12 Vic. c. 63, the absence of the chairman during the election, does not make the election absolutely void, if conducted by the other officers in the ordinary way. *Reg. v. Backhouse*, 2 Q. B. 16; 36 L. J. 7; 12 L. T. N. S. 579, B. C. In a non-corporate district a local board of health, under section 36, 11 & 12 Vic. c. 63, appointed certain of their members to be a streets committee. This committee passed a minute that certain streets should be levelled, channelled, curbed, and ballasted:—*Held*, that there were no acts of the committee requiring approval within section 36. That the proceedings were by the board itself. *Barnsley Local Board of Health v. Sedgwick*, 2 L. R. Q. B. 185. The seal of a local board of health, and signature of five of its members, is only necessary where something is to be done by others, to which the consent of the Board is necessary. *Reg. v. Worksop Board of Health, Brodhurst v. Worksop Board of Health.* 34 L. J. Q. B. 220; 5 B. & S. 951; 10 L. T. N. S. 297.

[3] By 11 & 12 Vic. c. 65, s. 54, the surveyor of the local board may examine any drain, watercloset, privy, cesspool, or ash-pit; and if it is in bad order, the board shall cause notice in writing to be given to the owner or occupier of the premises, requiring him to do the necessary works; and if such notice be not complied with, the party shall be liable to a penalty for every day during which he makes default:—*Held*, that the discretion to determine what works are necessary to be done is vested in the board, and that the justices have no jurisdiction to review its determination. *Hargreaves v. Taylor*, 3 B. & S. 613. Local boards of health, established by virtue of the Public Health Act, are not trustees within the meaning of the 192 sect. 5 & 6 Wm. IV. c. 76, and cannot transfer their powers to the borough corporation. *Swinford v Keble*, 35 L. J. Q. B. 185; 1 L. R. Q. B. 549. The 11 & 12 Vic. c. 63, s. 45, gives compulsory powers to a board of health to take private property as well as public property, and the notice of an intention to enter on land to make a sewer, need not be accompanied with a map of the proposed direction of the sewer. *Cleckheaton Industrial Society v. Jackson*, 14 W. R. 950. A provisional order of a secretary of state empowering a local board to put in force the powers of the Lands Clauses Act of 1845, with respect to the purchase of lands, has no force until confirmed by Parliament; and cannot be brought up by *certiorari* for the purpose of being quashed. *Frewer v. Hastings Local Board of Health*, 11 Jur. N. S. 670; 34 L. J. Q. B. 159; 13 W. R. 678. By sect. 65 of the 21 & 22 Vic. c. 98, memorials under sect. 120 of the Act 1848, shall be addressed to one of Her Majesty's principal Secretaries of State, and by sect. 81, all orders made by such secretary shall be binding and conclusive. His decision as to the amount of the claim for the expenses and interest thereon was final. *Wallington v. Willes*, 16 C. B. N. S. 797; 10 Jur. N. S. 906; 33 L. J. C. P. 233; 12 W. R. 917; 10 L. T. N. S. 784. That where the proper notices are given, and plans lodged under the 11 & 12 Vic. c. 63, this is a matter or thing begun or made within sect. 9 of the 21 & 22 Vic. c. 98, although it seems nothing appears to have been done towards the formation of the streets of which notice had been given. *Felkin v. Berridge*, 15 C. B. N. S. 257. A notice to pave, given under sect. 69 of the 11 & 12 Vic. c. 63, did not specify the particulars necessary to enable the party to do the work required, but stated that particulars of the necessary works might be ob-

(E) *Bye-Laws.*[1]

(G) *As to Drains, Ditches, &c.*[2] *See* 18 & 19 Vic. c. 121, ss. 21, 22.

tained from the borough surveyor's office, and it appeared that plans and specifications were lodged at that office:—*Held*, that in the absence of evidence that such plans did not give ample information of the work to be done, the notice suffices. *Bayley v. Wilkinson*, 16 C. B. N. S. 161; 33 L. J. M. C. 161. By 11 & 12 Vic. c. 63, s. 69, if any street (not being a highway) be not sewered, levelled, paved, &c. to the satisfaction of the local board, they may, by notice in writing to the respective owners or occupiers of the premises fronting such parts as may require to be sewered, &c., require them to sewer, &c. the same, within a time to be specified in such notice; and if such notice be not complied with, the local board may execute the works, and the expenses shall be paid by the owners in default:—*Held*, that service of a notice by delivering it to the clerk of an owner at his place of business was a sufficient notice to satisfy the requirements of the 69th section. *Mason v. Bibby*, 2 H. & C. 881; 10 Jur. N. S. 519; 33 L. J. Exch. 105. Notice to one who receives the rent of land *de facto*, without right thereto, satisfies the provision requiring notice to the owner, contained in sect. 62 of the 21 & 22 Vic. c. 98. *Peek v. Waterloo-with-Seaforth Local Board of Health*, 9 Jur. N. S. 1344; 33 L. J. M. C. 11, Exch. A board of health for a non-corporate district, acting under 11 & 12 Vic. c. 63, gave notice to the owners of the premises fronting, adjoining, or abutting on certain streets, requiring them to sewer, level, pave, &c., according to the provisions of sect. 69, which notices not being complied with within the specified time, the board entered into contracts with a third person for their performance; which contained provisions that the contractor was to be paid for the work when the money was collected from the owners of the adjacent properties, but the owners refused payment:—*Held*, that the contractor was entitled to sue the board of health on the contracts. *Worthington v. Sudlow*, 2 B. & S. 508.

[1] The 21 & 22 Vic. c. 98, s. 34, does not empower a local board of health to make a bye-law that no dwelling-house should be erected without a street or road at the rear or side to afford access to the privy or ash-pit of such house. An invalid bye-law can not be rendered valid by a proviso, leaving it discretionary whether the bye-law should be enforced. *Waite v. Garston Local Board*, 3 L. R. Q. B. 5; 37 L. J. M. C. 19. A local board made a bye-law, that if any person should construct any works, or do any act, or omit to do any act, or comply with any requirements of the local board, the local board might cause such works to be removed, altered, or pulled down:—*Held*, that the bye-law was invalid as exceeding the powers conferred by 21 & 22 Vic. c. 98, s. 34. *Brown v. Holyhead Local Board of Health*, 1 H. & C. 601. *Waite v. Garston*, (*Local Board of*,) 37 L. J. M. C. 19. A bye-law under 21 & 22 Vic. c. 98, requiring a month's notice before proceeding to build, is bad. *Hattersley v. Barr*, 12 Jur. N. S. 894; 14 W. R. 864; 14 L. T. N. S. 565, Exch. The 21 & 22 Vic. c. 98, s. 34, which, after repealing the previous provisions on the subject in the 11 & 12 Vic. c. 63, enacts that the local board may make bye-laws with respect to the closing of buildings or parts of buildings unfit for human habitation, does not authorise the local board to make such a bye-law so as to affect premises erected prior to 1853, when the district was formed. *Burgess v. Peacock*, 16 C. B. N. S. 624; 10 L. T. N. S. 617. *Anderton v. Rigby*, 13 C. B. N. S. 603; 9 Jur. N. S. 1058; 32 L. J. M. C. 137. *See Pearson v. Local Board of Health of Kingston-upon-Hull*, Ex. 35 L. J. M. C. 36; 13 L. T. N. S. 185. A local board of health has no power under 21 & 22 Vic. c. 98, s. 34, to pass a bye-law to prevent a person building for a certain time after he has given his notice and deposited his plans, &c. Their only remedy is to pull down such parts of the building as are not in accordance with their bye-laws. *Hattersley v. Burr*, Ex. 14 L. T. 565.

[2] A natural stream, supplied by natural and artificial drainage, was cleared out and partially widened and deepened by commissioners acting under a private inclosure act. In its passage to the river into which it ultimately flowed, it passed through a town and received the drainage of two or three houses. *Semble*, that this stream was not a sewer within the 11 & 12 Vic. c. 63. *Reg. v. Godmanchester Local Board of Health*, 34 L. J. Q. B. 13; 5 B. & S. 936. And that even if it were so, it came within the exceptions in sect. 43. A board of health constructed a sewer along the bank of a river, with trap-doors in it, communicating with the river. When the river was full, and water abundant, the board, by means of the trap-doors, drew the water off from the river, and let it into the sewer, for the purpose of flushing it. The place where the trap-doors were placed was at a part of the river above that on which a mill, occupied, was situated. On one occasion the board made a hole in the bottom of the river, and so let the stream run into the sewer for nearly two days continuously, during that time abstracting the water of the river, in such quantities, that the mill ceased working for want of water:—*Held* (5 B. & S. 515), that the acts of the board were in excess of the powers given them by statute. *Darlington Local Board of Health, In re*, 35 L. J. Q. B. 45; 6 B. & S. 562. Ex. Ch. An ancient open watercourse alongside a public footpath which has been from time immemorial unfenced is not a hole or other place near a street within the meaning of sect. 83 of the Towns Improvement Act,

(H) *As to Management and Cleansing of Streets, &c.*[1]

(I) *As to Regulations of Buildings.*[2]

(J) *As to Lodging-Houses.*[3]

(K) *As to Water Supply.*[4]

(L) *As to Offensive Trades, Slaughter-Houses, Sale of Meat, &c.*[5]

1847, so as to impose on the local board of health for the district the duty of protecting or inclosing the same. *Wilson v. The Mayor, &c. of Halifax.* 37 L. J. 44.

[1] It seems that section 68, 11 & 12 Vic. c. 63, vests the soil of the streets, and not the surface only, in the board of health. *Hall v. The Mayor, Aldermen and Burgesses of Bristol,* 37 L. J. C. P. 110. Whether a house or building forms part of a street within the meaning of the 24 & 25 Vic. c. 61, s. 28, is a question of fact. *Reg. v. Fullford,* 1 L. & C. C. C. 403; 9 Cox, C. C. 453; 10 Jur. N. S. 522; 33 L. J. M. C. 122; 12 W. R. 715; 10 L. T. N. S. 346. Houses form part of a street within the meaning of the act when they are so contiguous as substantially to form a continuous row. *Ib.* In order to constitute a street there must be a row of houses sufficiently continuous and sufficiently proximate to one another. *Ib. Semble,* that a set of detached houses not being in a continuous line, but some facing one way, and some another, and having no appearance of uniformity, is not a street within the act of parliament. *Ib.* Under 11 & 12 Vic. c. 63, s. 69, which empowers a board of health to require the occupiers of premises fronting, adjoining, or abutting upon a street (not being a highway), to sewer, level, or pave, and in default to execute the works required and charge the expenses on the owners, according to the frontage of their premises, the expense of each owner should be apportioned according to such frontage, irrespective of the width of the street. *Reg. v. Newport Local Board of Health,* 3 B. & S. 341; 32 L. J. M. C. 97. Under this act a railway and canal company, whose premises abut on a street, but with a fence between them and the street, is liable to be charged. *Ib.* Where a local act required the consent of commissioners to new streets becoming highways to make the inhabitants liable to repair them, an order of the local board under 11 & 12 Vic. c. 63, on owners to repair a street in respect of which such consent had not been given, is lawful. *Willes v. Wallington,* 13 C. B. N. S. 865; 32 L. J. C. P. 86—Ex. Ch. Under sect. 69 of the 11 & 12 Vic. c. 63, a local board of health has power only to require a street to be levelled with reference to any want of inequality or want of uniformity in the street itself. The local board has no power to require the level of a street to be raised or lowered so as to bring it into uniformity with the adjacent streets. *Caley v. Kingston-upon-Hull* (*Local Board of Health*), 34 L. J. M. C. 7; 5 B. & S. 815.

[2] An owner of a factory being desirous of rebuilding his premises, submitted the plans to a committee, to whom the town council, also the local board of health, delegated their powers, and, the plans having been approved, pulled down the factory, and proceeded to rebuild it according to such plans. The town council, under sect. 35 of the 21 & 22 Vic. c. 98, relating to buildings to be erected, having required the plaintiff to set back his premises, the court restrained them by injunction from interfering with the erection of the factory according to the approved plans. *Slee v. Bradford* (*Mayor, &c.*) 4 Giff. 262.

[3] *See* 14 & 15 Vic. c. 28. The penalty imposed by sect. 8, for receiving lodgers without being registered, attaches only after six months' notice as required by sect. 6, 17 J. P. 267.

[4] As to Board of Health being empowered to supply towns at a certain rate, see *Hildreth v. Adamson,* 30 L. J. M. C. 294.

[5] A party may be convicted under 11 & 12 Vic. c. 63, s. 64, for newly establishing the business of slaughterer, although the owner of the premises takes no part in the use of them, but allows others to do so at a fixed charge. *Liverpool Market v. Hudson,* 36 L. J. M. C. 30. Brick-making is not necessarily a noxious or offensive business, trade, or manufacture, within sect. 64 of the 11 & 12 Vic. c. 63. *Wanstead Board of Health v. Hill,* 13 C. B. N. S. 479; 9 Jur. N. S. 972; 32 L. J. M. C. 135; 11 W. R. 368; 7 L. T. N. S. 744. Conviction for "using" an unlicensed slaughter-house under 10 & 11 Vic. c. 34, s. 126, cannot be sustained against a person who merely pays the owner of the premises for being allowed to kill animals there. *Reg. v. Heyworth* (*Justices of the West Derby Hundred*), 14 L. T. N. S. 600, Q. B. The license required to be given by the commissioners for the user of new slaughter-houses must be given with a view to sanitary considerations, and before using the slaughter-houses. *Anthony v. Brecon Markets Company,* 2 L. R. 2 Ex. 167. A Cattle Market Company under the Local Government Act 1858, erected a building on their premises for the slaughter of cattle, without the consent of the Local Board of Health, and permitted owners of cattle to slaughter them there, charging a fee for each beast slaughtered, and the use of the building, and the tackle appurtenant thereto, the owners employing men to slaughter, and supplying implements:—*Held,* the company were properly convicted under 11 & 12 Vic. c. 63, s. 64. *Liverpool Cattle Market Company v. Hodson,* 2 L. R. Q. B. 131; 8 B. & S. 184. In 1853 a local board of health by

(M) *As to Prevention of Smoke, and Putting out Fires,*[1] *see* 16 & 17 Vic. c. 128.

(O) *As to Highways.*[2]

II. Nuisances and their Abatement and Removal.[3]

III. Prevention of Diseases.[4]

IV. Rates Assessed under the Acts, and Expenses Incurred.[5]

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bye-laws duly allowed and published, appointed certain places for markets for certain descriptions of goods on market days, and imposed penalties for the breach thereof:—*Held*, a violation of these bye-laws exposing for sale meat at a place other than that so appointed by the board, notwithstanding the spot where such meat was so exposed for sale was a place where such articles had for a long series of years been sold by him and others. *Savage v. Brook*, 15 C. B. N. S. 264; 10 Jur. N. S. 587; 33 L. J. C. P. 42.

[1] Consuming smoke as far as possible under a local act, means as far as possible consistently with carrying on the manufacture, *Cooper v. Woolley*, 36 L. J. Ex. Ch. 27; 2 L. R. Ex. 88.

[2] A landowner, under 11 & 12 Vic. c. 63, gave notice to the board of health of his intention to dedicate a road as a highway; to which the local board replied, that they would not adopt the road, as it had not been sewered, levelled, paved, flagged, and channelled to their satisfaction; referring to 11 & 12 Vic. c. 63, ss. 69, 70. The landowner, however, obtained and enrolled the certificate of two justices, under 5 & 6 Wm. 4, c. 50, s. 23, and the public then used the road, which was kept in repair by the landowner for twelve months; on its being out of repair, an indictment was preferred against the inhabitants:—*Held*, that they were not liable, as the road had not become a highway; for the road had not been made to the satisfaction of the local board, who were the surveyors. *Reg. v. Dukinfield*, 4 B. & S. 158; 32 L. J. M. C. 230—Q. B.

[3] A person to whom an owner of premises resident abroad sent a power of attorney, authorising him to receive the rents, is not thereby constituted owner, within sect. 2 of the 18 & 19 Vic. c. 121, so as to render him personally liable for the costs and expenses of the abatement of a nuisance on the premises previously to the receipt of his authority. *Blything Union* (*Guardians*) *v. Warton*, 3 B. & S. 352; 9 Jur. N. S. 867; 32 L. J. M. C. 132; 11 W. R. 306; 7 L. T. N. S. 672. A penalty, under sect. 14 of 18 & 19 Vic. c. 121, for disobedience of an order to abate a nuisance, cannot be enforced without a previous summons of the persons on whom it is imposed. *Reg. v. Jenkins*, 3 B. & S. 116; 9 Jur. N. S. 570; 32 L. J. M. C. L. An order to abate a nuisance may be enforced, though it is addressed to the owner or to the Nuisance Removal Committee instead of the owner alone. *Tomlins v. E. Stanmore*, 12 L. T. N. S. 1182. The landlord of a house let to yearly tenants may be ordered to abate a nuisance from a drain belonging to the premises. *Troncomb v. Freeman*, 3 L. J. N. 24. So a party may be directed to abate a nuisance caused by him, although he has left the premises. *Brown v. Bupele*, *ib.* 25. A mandamus directed to a local board of health must show that the person causing the nuisance, or the owner or occupier of the premises where it exists, have failed to comply with the notice to remove it. *R. v. Board of Health of the Borough of Godmoncher*, 35 L. J. Q. B. (Ex. Ch.) 135.

[4] See 18 & 19 Vic. c. 116, and 23 & 24 *ib.* c. 77, ss. 10, 11, 12.

[5] A mandamus may be issued within six months after judgment has been obtained against a local board of health for a contract claim, to levy a rate for paying off the debt, though the action was not commenced until more than six months after the claim accrued, if the delay is excused and shown not to have been undue. *Worthington v. Hulton, Clerk to the Local Board of Health of Moss Side*, 36 L. J. Q. B. 61. *Ringland v. Lowndes*, 33 L. J. C. P. 25; 9 L. T. N. S. 479; 13 *ib.* 163. It is no answer to an application for a mandamus to levy a rate in such a case that the board may possibly have funds to pay the amount required, and that a fresh rate may not be necessary. *Ib. Burland v. Kingston-upon-Hull Local Board of Health*, 3 B. & S. 271; 9 Jur. N. S. 275; 32 L. J. Q. B. 17. Past and future expenses may be provided for in one and the same rate, under 11 & 12 Vic. c. 63, s. 89, so long as the different items are sufficiently specified in the estimate. *Reg. v. Worksop Local Board of Health*, 11 Jur. N. S. 1015—Q. B.; 34 L. J. N. S. 220. *Broughton Local Board of Health, In re*, 12 L. T. N. S. 310—Q. B. The estimates for a rate should not be made out by items combining incongruous matters in one lump sum. *Reg. v. Worksop Board of Health*, Q. B. *supra*. A rate is bad for want of the seal of the local board. As to assessment of rates, see further *N. E. R. v. Board of Scarborough*, 38 L. J. M. C. 65. At the hearing, by justices, of a summons for non-payment of a special district rate to which D. had been assessed by a local board of health; under the 11 & 12 Vic. c. 63, s. 86, it appeared that the rate was good on the face of it, and had not been appealed against; and that he had failed, after due demand, to pay it. D., however, contended that the rate was bad:—*Held*, that the justices were bound to issue the warrant, the rate being good on its face and unappealed against. *Luton Local Board of*

V. Actions and Proceedings connected with.[1]

PUBLIC Meetings. *See* Libel.

PUBLIC Officer, Actions and Proceedings by and against. *See* Joint-Stock Company, 5 Abr. 254.

PUBLIC Officials, Trustees and Commissioners for Public Purposes, Liability of. See *ante*, Negligence.

I. Rights and Liability on Contracts or Quasi-Contracts.

II. Liability for Torts.

III. Dismissal of.

I. Rights and Liability on Contracts or Quasi-Contracts.[2]

Health v. Davis, 2 El. & El. 678. A local board of health may, when any street not being a highway is not sewered to their satisfaction, give notice to the owners or occupiers of the premises fronting the street, requiring them to sewer, within a certain time; and in the event of the notice not being complied with, the board may execute the works, and recover the expenses from the owners in default. Sect. 2 defines owner to be, "the person for the time being receiving the rack-rent of the premises on his own account or as agent or trustee for another, or who would receive the same if the premises were let at a rack-rent." Sect. 62 of the 21 & 22 Vic. c. 98, enacts that, where a local board has incurred expenses, for the repayment whereof the owner of the premises is made liable, the expenses may be recovered from the person who is the owner when the works are completed. Service of a notice, under sect. 69 of 11 & 12 Vic. c. 63, as to expenses incurred by the board, on a person *de facto* receiving the rent, is a service on the owner, within the 2nd section. *Peek v. Waterloo and Seaforth Local Board of Health*, 33 L. J. M. C. 11; 9 L. T. N. S. 338—Exch. *Jacomb v. Dodgson*, 9 Jur. N. S. 848; 32 L. J. M. C. 113; 3 B. & S. 461. Where sewers or other works have been executed under sect. 22 by the nuisance removal committee, resort must be had in the first instance for the expenses to the parties benefited, according to sec. 22; and until such means fail, justices have no jurisdiction to make an order against highway rates under sec. 7. The justices having made the order, *certiorari* will lie to quash it, as sec. 39 only takes away *certiorari* in cases under the Act where the parties have jurisdiction. *Reg. v. Gosse*, 3 El. & El. 277.

[1] The remedy by action and injunction under Board of Health Act 1858 excludes the remedy by mandamus for compensation. *The Dodington Board of Health*, 25 L. J. Q. B. 45. In order to be entitled to compensation, under sect. 144, of the Act, which gives "full compensation . . . to all persons sustaining any damage by reason of the exercise of any of the powers of this act," a person must show actionable damage. *Hall v. Mayor &c. of Bristol*, 2 L. R. 2 C. P. 322; 36 L. J. 110. The definition of an owner of premises let at a rack-rent, in sect. 2 of the 11 & 12 Vic. c. 63, is satisfied by a person who is *de facto* receiving the rack-rent. *Peek v. Waterloo and Seaford Board of Health*, 2 H. & C. 700. The 11 & 12 Vic. c. 63, s. 69, only authorises an arbitration in respect of the proportion to be borne by a defaulting owner, and not in respect of any question as to the expenses being reasonable or properly incurred by the board. *Bayley v. Wilkinson*, 16 C. B. N. S. 161; 10 Jur. N. S. 726; 33 L. J. M. C. 161; 10 L. T. N. S. 543—C. P. *Reg. v. Burslem Local Board of Health*, see El. & El. 1077—Ex. Ch. The local boards are entitled to notice of action where the alleged cause was the continued non-performance of duty imposed upon them by statute, being a thing done, or intended to be done, under the act. *Wilson v. Mayor of Halifax*, 3 L. R. Ex. 114; 37 L. J. Ex. 44. So is a person for doing an act which the board had power to do, in obedience to an order of an officer of the board, *bonâ fide* believing that the officer was acting under the authority of the board, is entitled to notice of action. *Chambers v. Reid*, Q. B. 14 W. R. 370. Under 11 & 12 Vic. c. 63, arbitrators may appoint an umpire after the twenty-one days limited by sect. 125 for making their award have expired without their having enlarged the time, provided such appointment be within the time limited by sect. 126 for making the umpirage. *Holdsworth v. Wilson*, 4 B. & S. 1; 32 L. J. Q. B. 289; 11 W. R. 733; 8 L. T. N. S. 434—Ex. Ch. *Kingland v. Lowndes*, 33 L. J. C. P. 25. Sect. 125 of the 11 & 12 Vic. c. 63, places an umpire with respect to the time for making his award, in the same position as a single arbitrator, and he must make his award within twenty-one days after his appointment, or within such extended time as shall have been appointed by him. *Killett and Local Board of Health of Tranmere*, 11 L. T. N. S. 457—B. C. An award for costs generally without ascertaining the amount, is good under 11 & 12 Vic. c. 63. *Holdsworth v. Wilson*, 32 L. J. Q. B. 289.

[2] Under a local act, commissioners were empowered, when a vessel has been sunk

II. Liability for Torts.[1]

III. Dismissal of Public Officers.[2]

PUBLIC Way. 5 Abr. 30. *See* Highways ; Turnpike Roads, 6 Abr. 293.

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or stranded, if the owner should neglect or refuse, within a certain time, to raise it, to cause it to be raised. A vessel having sunk, her two owners did not raise her, so, by order of the commissioners, endeavours were made to raise her, and these proving ineffectual, she was blown up. After the attempts to raise, but before the blowing up, one of the owners died:—*Held*, that the order for payment of the expenses could not be made against the executor, but that it might be made against the co-owner. *Wilson v. Cator*, 11 W. R. 337—Q. B. To an action for salary due from commissioners under a town improvement act to their clerk, they cannot plead that they never had at or since the accruing of the debt funds applicable to the payment of it, and that they had applied all the moneys which had come to their hands as such commissioners. *Bush v. Martin*, 2 H. & C. 311; 33 L. J. Exch. 17; 9 L. T. N. S. 510. A clerk to commissioners under a local act, who is paid by a fixed salary, is not within 6 & 7 Vic. c. 73, so as to require the delivery of a signed bill, although he is an attorney. *Bush v. Martin*, 2 H. & C. 311; 10 Jur. N. S. 347; 33 L. J. Exch. 17. *Saunders v. Slack*, 11 L. T. N. S. 484. Pleas of the Statute of Limitations and of the Attornies Act, to so much of the debts and monies as became due upon simple contract, were good. *Ib.*

[1] By a local act, incorporating the Towns Improvement Clauses Act, 10 & 11 Vic. c. 34, s. 47, the management of streets is vested in the commissioners; by sect. 48, they are made surveyors of highways; and by sect. 49, they are to be guilty of a misdemeanour for neglecting to repair any public highway within the limits of the special act, and liable to be indicted in the same manner as the inhabitants of a parish. The effect of these enactments is to transfer from the parish to the commissioners under the special Act, all the liabilities in respect of non-repair of the highways within the limits of the special act; therefore, damages may be recovered against the commissioners in an action by a private individual for neglect in repairing, it being the omission of an act they were bound to do. *Hartnell v. The Ryde Commissioners*, 4 B. & S. 361; 33 L. J. Q. B. 39. *Ohrby v. The Ryde Commissioners*, 33 L. J. N. S. 296; 10 Jur. N. S. 1048; 33 L. J. Q. B. 296. An act of Parliament gave powers to a company to make a canal, and provided that certain commissioners should determine, by the verdict of a jury, the sum to be paid for damage caused by the works authorised by the act:—*Held*, that the commissioners had no jurisdiction to try the question as to the fact of damage, but only to assess the damage, if any. *Barber v. Nottingham Railway Company*, 10 Jur. N. S. 260—C. P. See *R. v. Metropolitan Railway Company*, Q. B. 10 Jur. 204. The Middle Level Drainage Commissioners were directed by statute to make a cut, and make and maintain at or near its opening a sluice to exclude the tidal waters. They were trustees for a public purpose, and acting without reward. The sluice was properly made, but owing to the absence of due care and skill in the persons employed by them to maintain it, the sluice burst, whereby the tidal waters came in and flooded the neighbouring lands. There was no proof that the commissioners had negligently or improperly employed unskilful or incompetent agents:—*Held*, that the commissioners were not liable to an action at the suit of the owners of the neighbouring lands. *Coe v. Wise*, 5 B. & S. 440; 2 L. R. Q. B. 711; 10 L. T. 666. Commissioners acting gratuitously in the discharge of a public trust are responsible, in an action for injury caused by a breach of duty on their part, without showing affirmatively that they are possessed of funds, or the means of raising funds to meet any damages which may be recovered against them. *Ohrby v. Ryde Commissioners*, 5 B. & S. 743. A highway rate having been duly made for a parish, payment was refused on the ground that the property in respect of which the occupier was assessed was in a tything immemorially exempt from contributing to highway rates of the parish at large; and justices having refused to issue a warrant of distress to enforce payment, were ordered by the Court of Queen's Bench to do so; and the surveyor of highways having distrained under the warrant, an action was brought against him by the occupier, who at the trial proved the exemption claimed:—*Held*, that the action lay against the surveyor as the person executing the warrant. *Freeman v. Read*, 32 L. J. M. C. 226—Q. B.

[2] When there is a discretionary power of removal of a public officer vested in the Crown, there is no necessity for any judicial inquiry. *Dickson v. Combermere* (*Viscount*), 3 F. & F. 527. An action cannot be maintained against a Secretary of State unless he has acted dishonestly, nor any irregularities in the conduct of an inquiry be evidence against him, unless he was shown to have been aware of and to have sanctioned them, or unless they amounted to a wilful and substantial denial of justice. *Ib.* An action at law will not lie, by a military officer against his superior for letters written in his official character to the adjutant-general, and which caused the plaintiff's removal from the army. *Dawkins v. Lord Paulet*, 4 L. J. N. C. 272 Q. B.

PULPIT, Faculty for Erecting. *See Jackson v. Binger*, 37 L. J. P. & M. 9.

Q.

QUARE impedit.[1] 1 Abr. 233-238.

QUARTER SESSIONS. *See post*, Sessions.

QUARRY (Slate), is not within the Factory Extension Act 1857 (30 & 31 Vic. c. 103). *Kent v. Ashley*, 4 L. J. N. C. 237.

QUO WARRANTO.

I. Information in Nature of When it Lies.[2]

II. Proceedings and Costs Connected With.[3]

R.

RACES.[4]

RAILWAY and Canal Traffic Act. *See* Carriers, p. 91.

[1] To an action of *Quare impedit* by a patron of a living, against the bishop, for not inducting his presentee, the bishop is bound in his plea to state the grounds for his refusal distinctly and specifically. A bishop has no power to reject a presentee of the patron who has come from a foreign diocese, on the ground of the absence of a testimonial from his former bishop. The bishop's plea, alleging presentation as on a lapse, must allege previous notice to the patron. *Bishop of Exeter v. Marshall*, 3 L. R. H. L. 17. Where, in an action of *Quare impedit*, against both the alleged wrongful patron and the incumbent, the defendants join in their pleas, what is a good plea for the patron is also a good plea for the incumbent. *Carlisle v. Whaley*, 2 L. R. 2 H. L. 391.

[2] A *quo warranto* will lie in respect of the office of a guardian of the poor. *Reg. v. Hampton*, 13 L. T. N. S. 431—Q. B. 6 B. & S. 923. But it will not lie for usurping an office which is not of a public nature, although such office may have been created by a charter of the crown. *Smyth, Ex parte*, or *Smith*, 11 W. R. 754; 8 L. T. N. S. 458, Q. B. Where a disqualified person has been elected to an office, and another person claims to be seated by reason of his having been really elected, the former cannot, by resigning the office, deprive the latter of his right to an information in the nature of a *quo warranto*. *R. v. Blizard*, 36 L. J. Q. B. 18. A relator in a *quo warranto* rule, who has acquiesced in, and himself adopted, the mode of voting he objects to, is disqualified from applying for such a rule. *Reg. v. Lofthouse* or *Lockhouse*, 1 L. R. Q. B. 433; 35 L. J. Q. B. 141.

[3] An affidavit used in moving for a rule *nisi* for a *quo warranto* should show that the relator is a properly qualified person. *Reg. v. Thirlwin*, 10 Jur. N. S. 206; 33 L. J. Q. B. 171; 9 L. T. N. S. 731, B. C. Where, upon a rule for a *quo warranto* information against A., for exercising the office of a town commissioner, to which he had been elected by ratepayers, the relator was (as it was alleged) not entitled to vote; yet, as he was an owner of rated property in the town:—*Held*, sufficient interest to be a good relator. *Reg. v. Briggs*, 11 L. T. N. S. 372, Q. B. The court has power to change the venue in an information in the nature of a *quo warranto*. *Clark v. Reg.*, 3 El. & El. 147, Ex. Ch.; 9 H. L. Cas. 184. Where a rule for a *quo warranto* for the usurpation of an office has been obtained and served upon the defendant, who does not show cause against the rule, it will be made absolute, with costs. *Reg. v. Newcombe*, 15 W. R. 108, B. C. 9 *n*. *Lloyd v. Reg.* (*in error*), 2 B. & S. 656.

[4] The decision of a referee on a boat-race is void, if the power conferred upon him by the agreement of submission is not strictly fulfilled. *Sadler v. Smith*, 4 L. J. N. C. 255. As to Horse-Races, see *ante*, 231.

RAILWAYS and Railway Companies.

I. Of the Formation of Companies, See *ante*, p. 263.

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II. Statutes relating to,[1] Application to Parliament,[2] and Construction of Statutes.[3]

[1] Regulation of, 3 & 4 Vic. c. 97; 5 & 6 Vic. c. 55; am. 30 & 31 Vic. c. 127; (S.) *ib.* c. 126; am. 31 & 32 Vic. cc. 79, 119; 32 & 33 *ib.* c. 4. Construction and regulation of, 7 & 8 Vic. c. 85; ex. to Ireland by 30 & 31 Vic. c. 138; 25 & 26 Vic. c. 102, s. 84. Clauses Consolidation Act, 8 & 9 Vic. c. 20; 26 & 27 Vic. c. 92. Traffic regulations, 17 & 18 Vic. c. 31; am. (cheap trains), 23 & 24 Vic. c. 41. Obtaining of further powers by, 27 & 28 Vic. c. 120; and for construction of, 27 & 28 Vic. c. 121. Irish Acts, 14 & 15 Vic. c. 70; 23 & 24 Vic. c. 97; 27 & 28 Vic. c. 71; 29 & 30 Vic. c. 95. Dissol. 9 & 10 Vic. c. 28; 13 & 14 Vic. c. 83; arbitr. 22 & 23 Vic. c. 59. Securities issued by, 29 & 30 Vic. c. 108. 31 & 32 Vic. c. 119, the Regulation of Railways Act, 1868, amends the law relating to railways in regard to audit of accounts, issue of preferred and deferred stock, obligations and liability of companies as carriers, for safety of passengers, compensation for accidents, lighting railways, providing smoking compartments, prohibiting provision of trains for prize-fights, and the mode and tribunal for assessing compensation for the purchase of lands. *See* 32 & 33 Vic. c. 6.

[2] A company cannot legally covenant with a third party to apply for an Act of Parliament, as it would thereby render its funds liable in the event of its not so applying. 32 L. J. Ch. 513.

[3] The words "the Railway," in an act passed to amend a prior act, and to authorise the making of a junction railway, mean the original line, its branches, and the new junction. *Bristol and Exeter Railway Company v. Garton*, 8 H. L. C. 477; 30 L. J. Ex. 241. When the legislature authorises railway directors to take, for the purposes of their undertaking, any lands specially described in their acts, it constitutes them the judges whether they will or not take these lands, provided that they act *bonâ fide*. *Stockton and Darlington Railway Company v. Brown*, 9 H. L. C. 248.

III. Constitution and Powers of Companies.[1]

IV. Of Letters of Allotment and Scrip Certificates.[2]

V. Of Shares, Shareholders, and Dividends.

(A) *In General.*[3]

(B) *Calls on Shareholders.*[4]

(C) *Transfer of Shares.*[5]

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[1] Where an agreement made between two railway companies under their common seals contains clauses which are beyond the powers of the directors of one of the companies, a court of equity will, at the suit of a shareholder of that company, restrain both companies from proceeding. *Maunsell v. Midland Great Western (Ireland) Railway Company*, 1 H. & M. 130; 32 L. J. Ch. 513; 8 L. T. N. S. 826. An agreement by a railway company to contribute towards the parliamentary deposit required for bills promoted by another company is *ultra vires*. *Ib.* But no such agreement is *ultra vires* if its validity is expressly made to depend on the sanction of parliament. *Ib.* In the absence of fraud, it is not necessary that the whole of the nominal capital of a limited company should be subscribed before the business of the company can be carried on, or its powers exercised. *M'Dougall v. Jersey Hotel Company*, 10 Jur. N. S. 1043; 34 L. J. Ch. 28.

[2] Certificates of railway stock are not goods within the Factors' Act, 5 & 6 Vic. c. 39. *Freeman v. Appleyard*, 32 L. J. Exch. 175. A contract to accept the shares becomes complete on allotment, and it is the duty of allottee to apply for the shares and pay the deposit. Neither his default in this respect, nor the omission by the company to give notice of the allotment, exonerates him; and he is liable as a contributory. *Bloxam, Ex parte*, 10 Jur. 814; 33 L. J. Ch. 574; 10 L. T. N. S. 772.

[3] The special act provided that the company should not issue any share created under the authority of the act, nor should any share vest in the person accepting the same until one-fifth of the amount of the share was paid up:—*Held*, that this provision was intended for the protection of the public; that the payment of one-fifth of the amount due on a share was not a condition precedent to the liability of the holder for calls. *East Gloucestershire Railway Company v. Bartholomew*, 37 L. J. Exch. 17. A shareholder is not liable to be sued as such who has not executed the deed; although an action might be maintained against him framed on his agreement to become a shareholder and execute the deed. *The Irish Peat Company v. Phillips*, 30 Law J. Rep. Q. B. 363; 1 Best & S. 629. Dividends in a public company, earned before a testator's death, but declared afterwards, form income and not corpus. *Bates v. Mackinley*, 31 Beav. 280.

[4] The payment required on allotment is not a call. *Croskey v. Bank of Wales (Limited)*, 4 Giff. 314. A company, on the memorandum of association being duly signed, may make calls upon the shareholders, under article 2 of Table (B.) of the 19 & 20 Vic. c. 47, in the schedule, although all the capital has not been subscribed for, nor all the shares taken up. *Ornamental Pyrographie W. Company v. Brown*, 32 L. J. Exch. 190; 8 L. T. N. S. 506; 2 H. & C. 63. A railway company, in the absence of express prohibition, may assign, by way of mortgage, as security for a debt a call which though made, has not become payable. *Pickering v. Ilfracombe Railway Company*, 37 L. J. Ex. 118; 3 L. R. C. P. 235. As to making a call before all the capital is subscribed for or allotted, *see North Stafford Steel Company v. Ward*, 3 L. R. Ex. 172. A holder of shares in a company was adjudicated bankrupt on the 3rd of November, 1860. On the 4th of July, 1861, the company made a call, and on the 4th of February, 1862, the bankrupt obtained his certificate:—*Held*, that this was not "a liability to pay money upon a contingency," within sect. 178 of the 12 & 13 Vic. c. 106, the contingency not being one but several, and that therefore the certificate of discharge was no bar. *General Discount Company v. Stokes*, 10 Jur. N. S. 1205; 11 L. T. N. S. 423—C. P. *Martin's Anchor Company v. Morton*, 37 L. J. Q. B. 98.

[5] Where shares in a company have been issued fraudulently, a *bonâ fide* purchaser of these shares in the market, before any bill has been filed to impeach the transaction, is entitled, on a winding-up of the company, to prove on equal terms with the other shareholders of the company who bought their shares at par. *Barnard v. Bagshaw, In re*, 1 H. & M. 69. A contract to deliver shares does not require the actual delivery of scrip certificates, which are the mere indicia of property; but the party contracting to deliver the shares sufficiently performs his engagement when he places the other in the position of being the legal owner of them. *Hunt v. Gunn*, 13 C. B. N. S. 226. The transferee of shares where no negligence is shown to estop him, is entitled to the benefit of them, though stolen, and the forms fraudulently filled up. *Swan v. North British Australasian Company*, 2 H. & C. 175; N. S. 102—Ex. Ch. *See* Estoppel, p. 189. On the transfer of the entire interest in one railway company to another, preference stock agreed to be created in payment by the company to which the transfer is made, is chargeable

(D) *Forfeiture of.* See 8 & 9 Vic. c. 16; *Edinburgh Railway Company v. Hebblewhite*, 6 M. & W. Rep. 707; and *Giles v. Hutt*, 3 Ex. R.; 18 L. J. 53.

(E) *Registering of Shares.*[1]

VI. Borrowing Capital.[2]

VII. Power to take and use Lands and Premises under Lands Clauses Act.[3] *See* also *ante*, Compensation.

with stamp duty on its market value. *Furness Railway Company v. Commissioners of Inland Revenue*, 10 Jur. N. S. 1133; 2 H. & C. 855. A person who had forged a transfer of shares, and been registered as holder, obtained a certificate, and sold the shares to an innocent sub-purchaser. On the discovery of the forgery the sub-purchaser's name was removed from the register:—*Held*, that the company was estopped from denying the truth of the certificate; that the removal of the sub-purchaser's name was therefore a wrongful act, for which he could maintain an action against the company. *Bahia and San Francisco Railway Company, In re*, 18 L. T. N. S. 467; 3 L. R. Q. B. 584; 37 L. J. Q. B. 176.

[1] While half the call on the original allotment of shares in a company, limited, was due and unpaid, R. a shareholder, executed a transfer of his shares, but the company refused to register it. He then paid the half call due, and again tendered the transfer to be registered:—*Held*, that after the half call had been paid, it was the duty of the directors to have registered the transfer, and that the new call made by them did not make R. indebted to the company, so as to justify their continued refusal to enter the transferee's name on the register as the holder of the shares. *Reg. v. Inns of Court Hotel Co.* 32 L. J. Q. B. 369; 8 L. T. N. S. 551. A shareholder executed a transfer of his shares, which he took, together with his certificate of shares, to the company's office for registration. He left the transfer, but refused to leave the certificate for the inspection of the directors:—*Held*, the court would not, under the 25 & 26 Vic. c. 89, s. 35, compel the company to register the transfer. *East Wheal Martha Mining Co. In re*, 33 Beav. 119. The directors of a company have no discretionary power independently of powers expressly given to them by the articles of association to refuse to register a transfer which has been *bonâ fide* made. *Weston's case*, 38 L. J. Ch. 49; 4 L. R. Ch. 20. The power of the court to remove a shareholder's name from the register only exists in the two cases of his name having been improperly entered, and of his having ceased to be a member. *Ward ex parte*, 37 L. J. Ch. 83.

[2] A railway company can lawfully raise money on the security of the sale money, and rents and profits until sale of their surplus lands, irrespective of the borrowing powers under their act. *Imperial Mercantile Credit Association v. the London, Chatham, and Dover Railway Company*, 15 W. R. 1187. Where an existing company obtained parliamentary powers to construct a new line, and to raise new capital, and the 8 & 9 Vic. c. 18, was incorporated with the private act:—*Held*, that the 16th and 17th sections were inapplicable, and that the raising the prescribed capital, as provided by the act, was not necessary as a condition precedent to the taking of land compulsorily. *Weld v. London and South Western Railway Company*, 9 Jur. N. S. 510; 8 L. T. N. S. 13.

[3] The 16th and 17th sections of the Lands Clauses Act, requiring the whole capital to be subscribed, and a certificate obtained from justices to that effect before proceeding to take lands compulsorily, do not apply to a case of a branch railway authorised to be made by an already existing company. *Weld v. South Western Railway Company*, 32 Beav. 340; 33 L. J. Ch. 142. A railway company having entered upon land for the purposes of their act, with the consent of the owner, he is not at liberty to treat them as trespassers. *Knapp v. London, Chatham, and Dover Railway Company*, 9 Jur. N. S. 671; 32 L. J. Exch. 236; 8 L. T. N. S. 541; 2 H. & C. 212. If the company, after notice of intention to work, refuse to make compensation for the mines requisite for the support of their railway, they can only compel the mine-owner to work his mines in a proper manner according to the custom of the district, 36 L. J. Q. B. 20. B. having been served with a notice to treat, claimed compensation for a house and premises to which she was entitled for a term of years. The premises were let to T. and the railway company purchased his interest, and obtained the key of the premises; but as they did not proceed to the execution of the works, they refused to purchase B.'s interest:—*Held*, that the land was taken within the 68th section, and that the company was bound to pay for B.'s interest therein. *Barker v. Metropolitan Railway Company*, 10 Jur. N. S. 1127; 11 L. T. N. S. 312—C. P. The Lands Clauses Act does not apply to the land the site of the proposed line where the railway is abandoned, but only to "superfluous land." But even if it did, the adjoining owners would under it become entitled to the abandoned site as owners of the "superfluous lands." *Smith v. Smith*, 3 L. R. Ex. 282. Unsold superfluous lands ought to be divided among the owners of the adjoining properties in proportion to the frontage of each, that is, the length of the line of contact of each pro-

IX. Investment of Purchase-Money or Compensation.[1]

X. Of the Powers and Obligations to Construct and Repair Works.[2]

perty, if the line were made straight from the point of intersection of the boundaries on one side, to the point of intersection of the boundaries on the other. 35 L. J. Q. B. 161. *Moody v. Corbett*, 3 L. R. Q. B. 510; Exch. Section 16, 8 & 9 Vic. c. 20, does not authorise a railway company to alter or divert a road at their own discretion, this power is only given to them where it is absolutely necessary to enable them to construct their railway, and the mere fact of the company having stated on their deposited plans "proposed diversion of the road," does not give them the power of diverting the road. *Reg. v. Wycombe Railway Company*, 8 B. & S. 259; 2 L. R. Q. B. 310; 36 L. J. 121. A railway company which had taken lands for the purposes of their railway, under the Lands Clauses Consolidation Act (8 & 9 Vic. c. 18) and the Railways Clauses Consolidation Act (8 & 9 Vic. c. 20), and had them conveyed to them by a conveyance in the usual form, are not entitled to prevent the owner of the mines, subjacent or adjacent, from working and winning away the same without making compensation. It makes no difference that the mines and minerals are necessary for the support of the railway. *The Great Western Railway Co. v. Bennett*, 36 L. J. Q. B. 133. *Fletcher v. Great Western Railway Company*, 5 H. & N. 689. *Elliot v. North Eastern Railway Company*, 10 H. L. Cas. 333. The owners of mines extending under a railway gave notice to the company of their intention to work the mine under the line of railway, and the company declined to purchase. At this point the line of railway was in a deep cutting; and the company had made drains upon the line, for the purpose of carrying off the water which fell upon the railway, and ran from the sides of the cutting. The working of the mine had caused the land to sink, and thereby the drains had become in some places choked up, and the water percolated through the broken strata into the mines:—*Held*, that these drains were not accommodation works within secs. 68 and 69 of 8 & 9 Vic. c. 20. *Reg. v. Fisher*, 3 B. & S. 191; 32 L. J. Q. B. 12. To a count that the plaintiff was entitled to support for his house from an adjoining house, and that a railway company wrongfully deprived the plaintiff of the support of the adjoining house, by negligently and improperly pulling down the same, the company pleaded (except as to so much of the count as charged them with having negligently and improperly pulled down the adjoining house) that the same was delineated in the plans; and that because it was necessary in order to make the railway, they pulled down the house:—*Held*, that the plea was good. *Knapp v. London, Chatham, and Dover Railway Company*, 2 H & C. 212. By sec. 39 of the 8 & 9 Vic. c. 18, the coroner should summon a jury to take an inquisition, if the sheriff is interested in the transaction (as being a shareholder in the company requiring the land), and a *certiorari* will issue to bring up the inquisition; although by sec. 145 "no proceeding shall be quashed for want of form, nor shall the same be removed by *certiorari*." *Reg v. London and North Western Railway Company*, 9 L. T. N. S. 423. In a claim for compensation under the Lands Clauses Act, 1845, the promoters offered a sum for compensation, such sum to include the claimant's costs, and the jury gave a verdict for less than that sum:—*Held*, that the claimant was not deprived of his right to costs, as the offer was bad because it included costs. Such an offer to be valid must be for that which is the subject of compensation merely. *In re Balls v. the Metropolitan Board of Works*, 35 L. J. Q. B. 1 L. R. 337. *Quære.* — Whether a sum offered contemporaneously with the service of the notice of inquiry, but after the claimant has incurred the expense of attending at the nomination of the special jury, is a sum "previously offered" within section 51. *Id.* Under the 8 & 9 Vic. c. 20, ss. 68, 69, justices have power only to order accommodation works with reference to the present use of the land, not prospectively. *Reg. v. Midland and South Western Junction Railway Company*, 8 B. & S. 456. The costs of an inquiry whether value of land intersected by railway company's works is greater than the expense of making a communication with it, is not within the statute. *Cobb v. the Mid Wales Railway Company*, 6 Q. B. 117.

[1] See 8 & 9 Vic. c. 18, s. 69, where question of title arises.

[2] There is no obligation as regards the public to make the authorized line. *York and North Midland Railway Company v. Reg.* 1 E. & B. 858. But if by leaving a line or part of it in an unfinished state, a nuisance be created, they may be compelled by mandamus to complete it. *Id.* The shareholders may require that the capital should be applied to the purpose for which it was subscribed. *Cohen v. Wilkinson*, 1 McNaug. & G. 481. *See* 11 B. & A. 223. When an injury is alleged to have arisen from the improper construction or maintenance of a railway, the fact of one of its embankments giving way will amount to *primâ facie* evidence of such insufficiency; and this evidence may become conclusive, in the absence of any proof on the part of the company to rebut it. *Great Western Railway Company v. Braid*, 1 Moore, P. C. C. N. S. 101. Where a railway is carried over a highway by means of a bridge, no liability

XII. Powers of Board of Trade.[1]

XIII. Special obligations imposed on Railways by Statute; Passenger Duty and Exemptions.[2]

XIV. Bye-Laws.[3]

XV. Rights and Liabilities on Contracts.[4]

XVI. Liabilities for Acts of Agents or Persons in Employment of Company.[5] *See* also *ante*, Negligence.

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to keep in repair the immediate approaches on each side of the bridge is cast upon the company by reason of any of the provisions in the Railways Clauses Act, 1845, even though the company has lowered the level of the old highway in making those approaches. *London and North Western Railway Company v. Surveyor of Highways, Skerton*, 33 L. J. M. C. 158; 10 L. T. N. S. 648. Upon failure of the company to repair the approaches:—*Held*, that s. 71, Lands Clauses Act, 1845, did not impose any liability upon the company to repair such approaches. *Taff Vale Railway Company*, 19 L. J. 278. As to the extension of time for completion, *see* 31 & 32 Vic. cc. 18, 46.

[1] *See* 3 & 4 Vic. c. 97, and 14 & 15 Vic. c. 105. A railway company cannot enter on lands upon paying the surveyor's valuation into court and giving a bond; except where the necessity for entering on the land is urgent. Where the railway company have entered after the 20th August, 1867 (30 & 31 Vic. c. 127), the valuation must be by a surveyor appointed by the Board of Trade. *Field v. Carnarvon Railway Company*, 5 L. R. Eq. 190; 37 L. J. 176; 17 L. T. 534.

[2] "Public baggage, stores, arms," &c. sent by railway, in charge of any of Her Majesty's forces specified in the 7 & 8 Vic. c. 85, s. 12, is "their baggage," no matter what may be the disproportion between the amount of baggage and the number of the forces in charge of it, and must be carried by a railway company at the rates imposed by that section. *Attorney-General v. Great Southern and Western Railway Company*, 14 Ir. C. L. R. 447—Exch. A railway company, over whose line another company has running powers, and for whom the servants of the line receive the fares, is bound to keep and deliver the accounts of such receipts, and to pay the passenger duty thereon, just the same as if the receipts were in respect of fares for travelling in their own carriages. *The Great Western Railway Company v. The Attorney-General*, 1 L. R. H. L. 1; 35 L. J. Ex. 123. To entitle a railway company to an exemption from passenger duty in respect of receipts by cheap or parliamentary trains it is essential that the trains should stop, if required to set down and take up passengers at every passenger station where the train passes on the line. Therefore, where by the agreement between two railway companies for running powers over one of the lines, the former company had not the power of stopping at every station:—*Held*, that the exemption could not apply. *The Great Western Railway Company v. The Attorney-General*, 1 L. R. H. L. 1; 35 L. J. Ex. 123.

[3] The ordinary railway bye-law that a passenger not producing or delivering up his ticket is to pay the fare from the place whence the train originally started, and, in default, shall forfeit and pay a sum not exceeding 40*s*., only applies to the case of a person having a ticket, but refusing to produce it, but not to a person travelling without a ticket, as 8 & 9 Vic. c. 20, s. 103, requires that there should be an intent to avoid payment. *Dearden v. Townshend*, 1 L. R. Q. B. 10; 35 L. J. M. C. 50. The power given to the officers of a railway company to seize and take before a justice of the peace any person who has committed an offence against the provisions of general or the special Act, extends to offences against any bye-law duly sanctioned by the Board of Trade imposing a penalty. *Barry v. Midland Railway Company*, 1 Ir. C. L. 130. To justify an arrest under a bye-law, a penalty must be imposed either by the bye-laws or statute. *See* 16 M. & W. 212.

[4] A railway company may be bound by a contract not under the seal of the company. *Wilson v. West Hartlepool Harbour and Railway Company*, 10 Jur. N. S. 1064; 11 L. T. N. S. 327. Hence where a company, through their directors, hold out to the world that a certain individual is their agent for a particular purpose, he enters into a contract on their behalf by letters, and they ratify his conduct, they cannot afterwards dispute acts done by him within the scope of such countenanced agency. *Ib.* A railway company taking a manufactory is bound to take, as part thereof, the trade fixtures therein. *Gibson v. Hammersmith and City Railway Company*, 32 L. J. Ch. 337; 11 W. R. 299; 8 L. T. N. S. 43. A notice to take lands by a public body under their compulsory powers, and an offer by the owner to take a certain amount as compensation money, does not constitute a binding contract between the parties, and consequently there is no conversion as against the heir-at-law of the vendor. *Arnold, In re*, 9 Jur. N. S. 883; 8 L. T. N. S. 623. See *Mason v. Stokes Bay Pier and Railway Company*, 32 L. J. Ch. 110.

[5] A railway company, though a corporation, is liable in an action for false imprisonment, if the act be committed by the authority of the company; the authority need not be under seal; but it lies on the

XVIII. Of Offences relating to.[1]

XIX. Remedies by and against.

(A) *By Actions and Suits.*[2]

(B) *By Mandamus.*[3]

XXI. As to Local Rates and Taxes.[4]

plaintiff to give evidence justifying the jury in finding that the company's servants who imprisoned him, or some of them, had authority from the company to do so. *Goff v. The Great Northern Railway Company*, 30 L. J. Q. B. 148; 3 E. & E. 672. See *Chilton v. London and Croydon Railway Company*, 16 M. & W. 212. The general manager has an implied authority to employ a medical man to attend a servant of the company who was injured by an accident on the line. *Walker v. The Great Western Railway Company*, 36 L. J. Ex. 123; 2 L. R. 228. Actions do not lie against railway companies for acts of station master not falling within the scope of his authority. *Poultin v. South Western Railway Company*, 36 L. J. Q. B. 294. 34 L. J. Q. B. 204.

[1] 24 & 25 Vic. c. 97. Obstructing line, throwing stones, &c. *ib.* c. 100. Giving false account to avoid tolls. *See* 8 & 9 Vic. c. 20. In neglecting to maintain gates where line crosses highway, *see* 2 & 3 Vic. c. 45, s. 1; 5 & 6 Vic. c. 55. As to Board of Trade directing proceedings against company, *see* 7 & 8 Vic. c. 85, s. 18. Penalty for using engines not properly constructed to consume smoke. 2 E. & E. 344.

[2] A railway company "carries on its business," within the meaning of 9 & 10 Vic. c. 95, s. 60, only at the principal station where the general superintendence of the whole concern is centred, and not at any station, however large, where the local management of any portions of the line is conducted, subject to the supervision of the general manager at the principal station. *Brown v. London and North Western Railway Company*, 32 L. J. Q. B. 318; 11 W. R. 884; 8 L. T. N. S. 695. A railway company may have discovery of documents upon the affidavit of their attorney, it being impossible for them literally to comply with the terms of the 17 & 18 Vic. c. 125, s. 50, and it being the intention of the legislature that its benefit should be extended to all suitors. *Kingsford v. Great Western Railway Company*, 16 C. B. N. S. 761; 10 Jur. N. S. 804; 33 L. J. C. P. 307; 12 W. R. 1059; 10 L. T. N. S. 722. A covenant to apply funds to purposes otherwise than those authorised by law, cannot be the foundation of an action. *Taylor v. The Chichester and Midland Railway Company*, 3 Exch. 201. A suit by a shareholder to restrain an illegal act must be in form on behalf of all the shareholders, though it may be sustained notwithstanding their opposition. *White v. Carmarthen, &c. Railway Company*, 1 H. & M. 786; 33 L. J. Ch. 93; 11 L. T. N. S. 179, n. The report of a medical officer to the directors is a privileged communication. *The Brighton Railway Company*, H. T. 1870, C. P.

[3] An occupier, having acted on a notice that his land would be taken, removed to other premises, is entitled to maintain an action of mandamus to compel the company to issue their warrant to the sheriff to assess compensation. If the company, after the expiration of such notice, neglect to proceed in such action, the plaintiff might recover more than nominal damages. *Morgan v. The Metropolitan Railway Company*, C. P.; 37 L. J. C. P. 265. A mandamus to compel a registry of a transfer of shares in a railway company to an infant has been refused. *Reg. v. Midland Counties and Shannon Junction Railway Company*, 9 L. T. N. S. 155—Ir. Q. B.

[4] By a local Act, rates were authorised to be levied, and it was declared that "the occupiers of any land used only as a railway should be rated at one-fourth part only of the net annual value." Sidings and turntables, which by the "case" were found necessary for the working of the railway:—*Held*, to come within the definition of "land used only as a railway," and that they were rateable only at the reduced rate. *Midland Railway Company v. Birmingham, Borough of*, Q. B.; 14 L. T. 404. The Lands Clauses Act, 1845, s. 133, whereby promoters of any undertaking who become possessed by statute of lands liable to the poor-rate, are, till their works are completed, "to make good the deficiency" in the rate consequent on their taking the land, the deficiency to be computed according to the rating at the time of the special act, does not make such promoters liable to be rated, but only to pay such deficiency. *The Mayor &c. of London v. St. Andrew's, Holborn*, 36 L. J. M. C. 95. The Midland Railway Company have running powers over a great portion of the line belonging to the Great Western Railway Company, forming a loop-line with their own. The fares paid by passengers getting into the train at stations on the loop-line were received by the officials of the Great Western, and they accounted for them to the Midland Company:—*Held*, that it was unimportant for whom the Great Western received the fares, they being the hands that received them; and that the receipts, being in respect of passenger traffic, they must be accounted for and the duty paid to her Majesty. *The Great Western Railway Company v. the Attorney General* (House of Lords), 36 L. J.; Ex. 123. Engine-drivers, mechanics, porters, &c., employed at weekly

XXII. As to Tolls.[1]

XXIII. Of Abandonment, Dissolution, and Winding up.[2] *See* Joint-Stock Companies, *ante*, p. 270, and 32 & 33 Vic. c. 114. As to Schemes or Arrangements on Insolvency, *see* 30 & 31 Vic. c. 127, and the Orders of Court, 24th Jan. 1868.

RAPE, and Attempt to commit.[3]

RATE,[4] 3 Abr. 109. *See* Church-Rates; Landlord and Tenant; Poor-Rates; Public Health.

RECEIPT.[5]

RECEIVING Stolen Goods.[6] *See* Larceny, 5 Abr. 231.

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wages on railways, do not hold "public offices and employments of profits" within the 5 & 6 Vic. c. 35, Schedule (E.), so that income-tax on their wages can be attached in the hands of the company, under the 23 Vic. c. 14, s. 6. *Attorney-General v. Lancashire and Yorkshire Railway Company*, 2 H. L. C. 702; 33 L. J. Ex. 163; 10 L. T. 95. Schedule (E.) extends only to offices or employments under corporations, which are of a public nature. *Ib.*

[1] A local Act empowers a railway company to seize and sell goods, for which tolls due to the company have not been paid, provided the persons seizing the goods shall have their names annexed to the list of tolls, and that a demand shall have been previously made. *North v. London and North Western Railway Company*, 14 C. B. N. S. 132; 32 L. J. C. P. 156; 8 L. T. N. S. 246. Where these conditions have not been complied with, the company has no right to seize the goods. See *Hughes v. Chester Railway Company*, 31 L. J. Ch. 97. *See* 8 & 9 Vic. c. 20, ss. 92, 93.

[2] In an action for calls, by a company being voluntarily wound up under the Act, 1862, the defendant may set off a debt due to him from the company; but it is no defence that the liquidator omitted to give notice to the defendant that he was to be put on the list previous to his being placed thereon. *The Brighton Arcade Company v. Dowling*, 37 L. J. C. P. 125.

[3] The mere fact of connexion with an idiot girl capable of recognising and describing the prisoner, but incapable, so far as her idiotcy rendered her so, of expressing dissent or consent, is not sufficient evidence of a rape to be left to a jury. *The Queen v. Fletcher*, 55 L. J. M. C. 172; 1 L. R. C. C. R. 39. So, where woman's consent is obtained, though by fraud, an indictment for rape cannot be supported. *R. v. Barrow*, 3 L. J. N. 248. Where the prisoner was indicted for unlawfully attempting to have carnal knowledge of a girl under the age of ten years, and the evidence was, that the prisoner attempted to have carnal knowledge of the girl, but that she consented to the attempt, it was held, that the fact that the girl consented to the attempt was immaterial, and that the conviction of the prisoner was right. *R. v. Beale*, 35 L. J. M. C. 60. Evidence was admitted of subsequent perpetrations of the same offence on different days previously to complaint to the mother, it being virtually one continuous offence. *Reg. v. Rearden*, 4 F. & F. 76. After an acquittal for a rape and an assault with intent, the prisoner may be indicted for a common assault; but the prosecution can only prove a common assault, though prisoner's counsel can go into the whole matter on cross-examination. *Reg. v. Dungey*, 4 F. & F. 99.

[4] By local acts improvement commissioners were appointed to act in and for a town in a county, and were authorised to levy annually within the town, for the purposes of the act, a certain rate upon all gaols situated within the town. A subsequent local act, after reciting that it was expedient that the county should be relieved from any taxes in respect of any of the gaols of the county, enacted that no rate or assessment whatsoever, parliamentary or parochial, should be raised or levied on the county for or on account of the gaols, or any or either of them:—*Held*, that this latter act exempted a county gaol situated in the town. *Reg. v. Kent (Justices)*, 2 El. & El. 911. A covenant to pay all rates includes paving. *Thompson v. Lapworth*, 2 L. J. N. 17.

[5] A secretary of a benefit society of which his wife was a member, and having received a sum of money belonging to the members, with directions to pay it into a savings' bank, uttered what purported to be a bank pass-book, containing a false entry of the receipt of the money, knowing it to be forged, in order to induce the members of the society to believe that he had paid the money into the bank when he had not done so:—*Held*, that he was rightly convicted of uttering an accountable receipt, that it was no objection to the conviction that he was part-owner of the money, and that there was evidence of an uttering with an intent to defraud. *Reg. v. Moody*, 1 L. & C. C. C. 173. A turnpike toll-gate ticket is a receipt for money within 24 & 25 Vic. c. 98, s. 23. *Reg. v. Fitch*, 1 L. & C. C. C. 159.

[6] On an indictment for receiving goods,

RECITALS. *See* Estoppel.

REFRESHMENT-Houses. *See ante*, p. 245.

REFORMATORY.[1]

REGISTRATION. *See* respective titles, as " Bill of Sale," &c.

RELEASE.[2] 6 Abr. 319.

REMOVAL. *See post*, Settlement.

RENEWAL. *See* Covenant, 3 Abr. 477.

RENT.[3] *See* Covenant; Distress; Lease.

REPLEVIN.

I. Where it lies.[4]

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knowing them to be stolen, the only evidence in support was that of the thief, except the fact that the goods were found on the premises of the prisoner:—*Held*, not sufficient confirmatory evidence to justify a conviction. *Reg. v. Pratt*, 4 F. & F. 315. *Reg. v. Robinson*, *ib.* 43. On an indictment for stealing and receiving a mixture, it appeared that the thief had stolen two sorts of grain, and mixed them and sold them to the prisoner:—*Held*, that the latter could not be convicted on such an indictment. *Ib.* Two or more persons may be indicted jointly for receiving stolen property knowing it to have been stolen, though each successively received the whole of the same at different times. *R. v. Reardon*, 35 L. J. M. C. 171. A husband may be convicted of feloniously receiving property which his wife has stolen voluntarily and without any constraint on his part, if he receives it knowing that she has stolen it. *Reg. v. M'Athey*, 1 L. & C. C. C. 250; 9 Cox, C. C. 251.

[1] A reformatory, established under 17 & 18 Vic. c. 86, is not rateable to the relief of the poor. *Shephard v. Bradford* (*Churchwardens*), 16 C. B. N. S. 369; 10 Jur. N. S. 799; 33 L. J. M. C. 182; 12 W. R. 867; 10 L. T. N. S. 421. Law consolidated by 29 & 30 Vic. c. 117, s. 37.

[2] To an action on a joint and several promissory note against one of the makers he pleaded a release. The replication set out the release, which was contained in a deed of assignment to a trustee for the benefit of creditors, made prior to the Bankruptcy Act of 1861, and it averred that the note declared on was not, nor was it intended to be, included in the sum set opposite to the plaintiff's name in the schedule, or in the release:—*Held*, notwithstanding, that the effect of the deed was to release the note declared on. *Wigens v. Pickwick*, 14 L. T. N. S. 521—Exch. *See Taylor v. Manners*, 1 L. R. 48; 35 L. J. Ch. 128. *Lyall v. Edmonds*, 30 L. J. Ex. 193; 6 H. & N. 337. After declaration the plaintiff executed a release to the defendant, and gave his own attorney notice not to proceed; the release was pleaded; to this plea there was a replication confessing the release; judgment was signed for the costs, and execution issued:—*Held*, that this was a proper case for the summary interference of the court. *Games, ex parte; Williams v. Lloyd*, 33 L. J. Ex. 317. A release to the surviving partners in a firm, by the executors of a deceased partner, of all held by the firm, expressing no consideration for the conveyance upon the face of it:—*Held*, sufficiently stamped with a common deed stamp. *Steer v. Crowley*, 14 C. B. N. S. 337; 32 L. J. C. P. 191.

[3] B. leased a farm to A. for fourteen years by deed, reserving rent payable quarterly. The lease contained various clauses by which A. and B. agreed to do certain things, and concluded with the following clause: " And the landlord further agrees and orders that K., or his appointed agent, is to receive all rents from the tenant at all times when it becomes due during the term hereby granted, and his receipt to be a full and sufficient discharge from all liability:"—*Held*, that K., having no interest in the rent, the agreement or authority for him to receive it was revocable. *Venning v. Bray*, 2 B & S. 502. Though the grantee of a rent-charge under a grant at common law is not entitled to be registered before he has been in the actual receipt of the rent (since until then he has only a possession in law, and not the actual possession required by 2 Will. 4, c. 45, s. 26), it is otherwise where the rent-charge is by a conveyance operating under the Statute of Uses (27 Hen. 8, c. 10, s. 1). *Heelis*, App., *Blain*, Resp., 18 C. B. N. S. 90; 11 Jur. N. S. 18; 34 L. J. C. P. 88.

[4] Replevin lies in the case of goods taken under a warrant of distress issued by a justice to enforce payment of the costs ordered on an appeal against a poor-rate, under the 12 & 13 Vic. c. 45, s. 5, and 11 & 12 Vic. c 43, s. 27. *Gay v. Matthews*, 32 L. J. M. C. 58—Q. B.; 4 B. & S. 425. The 24 Geo. 2, c. 44, s. 6, as to previous demand of the warrant, and the 2 & 3 Vic. c. 93, s. 8, and the 1 & 2

II. Of the Proceedings in Replevin.[1]

REPLICATION.[2]

REPUTED Ownership. *See* Bankruptcy; Bill of Sale.

RESCUE of Goods taken as a Distress. *See* Distress.

RESIGNATION of Bishops. *See* 32 & 33 Vic. c. 111.

RESPONDENTIA. *See ante*, p. 84.

RESTITUTION of Stolen Property. *See* 7 & 8 Geo. 4, c. 29 ; and *see Walker v. Mayor, &c. of London*, 38 L. J. M. C. 107.

REVENUE. *See* Customs and Excise; Income-Tax and Property ; Stamps ; Succession Duty; Taxes.

REVERSION. As to sale of, *see* 31 & 32 Vic. c. 4.

REVISING Barrister.[3]

REVIEW of Taxation. *See* Costs.

REVIVOR. 6 Abr. 343.

REVOCATION. *See post*, Will.

REWARD, Action for Recovery of.[4]

Will. 4, c. 41, s. 19, as to notice of action, do not apply to replevin. *Ib.* A county court has jurisdiction in replevin commenced in such court, even though a question of title to a corporeal or an incorporeal hereditament should arise. *Fordham v. Akers*, 9 L. T. N. S. 478. S. C. n.; 4 B. & S. 578. *Reg. v. Gurdon*, 33 L. J. Q. B. 67.

[1] A declaration as follows, "A. B. sues C. D., for that the defendant, on land in the occupation of the plaintiff, in the parish, &c., called, &c., took the goods of the plaintiff, and unjustly detained the same against sureties and pledges, until, &c., and he claims £——," is a declaration in replevin. *Gay v. Matthews*, 4 B. & S. 425.

[2] To a declaration for goods sold and delivered, the defendant pleaded infancy; to which the plaintiff replied, on equitable grounds, that at the time of contracting the debt the defendant, knowing his true age, falsely and fraudulently represented that he was of full age:—*Held*, that the replication was bad as a departure; and also as not alleging facts to avoid the plea, on equitable grounds. *Bartlett v. Wells*, 31 L. J. Q. B. 57; 1 B. & S. 836. See *Wilson v. Gabriel*, 4 B. & S. 243. *Hyde v. Graham*, 32 Q. J. Ex. 27; 1 H. & C. 593.

[3] The production of the duplicate notice of objection stamped by the postmaster, pursuant to the 6 & 7 Vic. c. 18, s. 100, and duly signed by the objector, is evidence that the notice of objection retained by the postmaster to be sent to the voter, was signed by the objector as required by s. 7. *Lewis v. Roberts*, 31 L. J. C. P. 51; 11 C. B. 23. See *Norris v. Pilcher*, 38 L. J. C. P. 65. A person may have two places of abode, and may state either in the notice of objection delivered pursuant to 6 Vic. c. 18, s. 7. *Curtis v. Blight*, 31 L. J. C. P. 48; 11 C. B. 95. Where notice of intention to prosecute had not been given to the master, as required by 6 & 7 Vic. c. 18, s. 62, the court, according to *Autey v. Topham*, 5 M. & G. 1, held that sec. 64 deprived the court of jurisdiction to hear the appeal unless the notice was given. The decision of this court on appeal, though made final by 6 & 7 Vic. c. 18, s. 66, does not prevent the revising barrister from entering into a case in all respects similar to the one so decided, but affecting a different register and a different voter. *Roberts v. Percival*, 34 L. J. C. P. 84; 13 C. B. 36. If appeals have been consolidated by the revising barrister, which do not depend upon the same point of law, the court will dismiss the consolidated appeal. *Bennett v. Brumfitt (Ashcroft's case)*, 38 L. J. C. P. 72. Where the court sends a case back to the revising barrister to decide a matter of fact which he has referred to the decision of the court instead of deciding it himself, and the appellant then drops the appeal, the respondent is not entitled to costs. *Lawe v. Maillard*, *Ib.* 179. Though the appellant has given notice of his appeal to the respondent at the time he lodged his case with the master, in compliance with the 6 & 7 Vic. c. 18, s. 62, the court will not, under s. 64 of this act, postpone the hearing, because there are not ten clear days, as required by the act, between the time when the notice was given and the day appointed for hearing of appeals, if there was sufficient time after the decision of the revising barrister to have given the necessary notice. *Luckett v. Voller*, 31 L. J. C. P. 43; 11 C. B. 1.

[4] A police constable apprehended a boy

RIGHT, Petition of. *See* Petition of Right.

RIOTS and Routs. 6 Abr. 346.

RIVERS and Canals.[1] 6 Abr. 348; *see* also *ante*, Canals.

ROBBERY.[2] 5 Abr. 329; *see* Larceny.

(in Bedfordshire), having in his possession a horse and gig under circumstances of suspicion, and, discovering that the boy had absconded with them from Woolwich, gave notice to his superintendent, who within a reasonable time gave notice to the defendant, the boy's master. After the boy's apprehension, but before the master received notice thereof, the latter had issued an advertisement offering a reward of 10*l.* to any one who would give such information as should lead to the recovery of the property and the apprehension of the thief:—*Held*, that a plea charging the police constable with a breach of duty in neglecting to inform the defendant of the boy's apprehension until after the issuing of the advertisement, was no answer to an action by the constable for the reward. *Neville v. Kelly*, 12 C. B. 740; L. J. C. P. 118. Defendant's shop having been broken into and watches and other property having been stolen, he offered a reward to be given "to any person who will give such information as shall lead to the apprehension and conviction of the thief or thieves." Shortly afterwards R. brought one of the watches to plaintiff, who gave information to the defendant, in consequence of which R. was apprehended with another of the watches in his possession. While in custody, he told the police where the thieves might be found, and they were taken at that place with some of the stolen property upon them, and were subsequently convicted of the burglary. In an action to recover the amount of the reward,—*Held*, that the information given by the plaintiff was not so remote that the question ought not to be left to the jury to say whether he did give such information as led to the apprehension and conviction of the thieves. *Tarner v. Walker*, 35 L. J. Q. B. 179, affirmed. Exch. 36 L. J. Q. B. 112; 1 L. R. Q. B. 641.

[1] The bed of all navigable rivers where the tide flows and reflows is vested in the Crown, subject to the right of navigation in the public, and of which the rights to anchorage form part. *Gann v. Free Fishers of Whitstable*, 35 L. J. C. P. 29. *See in re Ranfarley Earle*, 1 J. R. Eq. 128. The soil of the alveus is not the common property of the respective owners on the opposite sides of the river; the shore of each belongs to him in severalty, and extends *usque ad medium filium atquæ;* but neither is entitled to use it in such a manner as to interfere with the natural flow of the stream. *Bickett v. Morris*, 1 L. R. H. L. 47; 12 Jur. N. S. 803. A fence or bulwark on the bank is allowable, but the alveus is sacred. *Ib.* Any encroachment by one proprietor may be resisted by the other; and the onus of proving that the act is not an encroachment falls on the party doing it, who is *primâ facie* held responsible. *Ib.* Mere apprehension, without some show of injury, will not ground a complaint; but it is not necessary to obtain or to be guided by scientific opinions. *Ib.* One who erects or keeps erected on the shore of a navigable river between high and low water-mark a dangerous (hidden) obstruction to the navigation, is responsible for an injury thereby occasioned to a barge coming to the wharf, without any default on the part of the persons in charge of it. *White v. Phillips*, 15 C. B. N. S. 245; 33 L. J. C. P. 33. Defendants had for certain lawful but temporary purposes sunk piles in a navigable river, leaving a portion of the piles above high water, and after the necessity for the piles had ceased, sold them to another person who cut off the piles even with the bed of the river, but by reason of the bed shifting part of a pile was exposed, and plaintiff's ship was damaged by it:—*Held*, the defendants were not liable in an action for damages; they having parted with the possession of the piles in a condition in which the damage could not have occurred but by the gross negligence of plaintiff. *Bartlett v. Baker*, Ex. 34 L. J. N. S. 8. To acquire a right by prescription to foul a river by the discharge of sewage, it must be shown that the property of the landowner has been prejudicially affected thereby for a period of twenty years. The court will interfere by injunction to prevent a prospective nuisance, where it is shown that there is a present nuisance, which is increasing. *Goldsmid v. Tunbridge Wells Improvement Commissioners*, 1 L. R. Ch. App. 349; 35 L. J. 382. The 12 Edw. 4, c. 7, relates to navigable rivers only, and though weirs in navigable rivers are illegal, unless they existed before the time of Edward I., such an easement may be acquired in private waters by grant from other riparian owners, or by enjoyment, or by any means by which such rights may be constituted. *Rolle v. Whyte*, 3 L. R. Q. B. 286; 37 L. J. Q. B. 105; 8 B. & S. 116.

[2] A creditor having violently assaulted his debtor, and so forced him to give him a cheque in part payment, and having then again assaulted him, in order to force him to give him money in payment of the debt:—*Held*, that as there was no felonious intent, he could not properly be convicted of robbery. *Reg. v. Hemmings*, 4 F. & F. 50.

RULES.[1] 6 Abr. 352. *See* Judge's Order, *ante*, p. 275.

S.

SALE, Bill of. 2 Abr. 494, *ante*, p. 79.

SALES. *See* 2 Abr. 63, *ante*, p. 79; Frauds, Statute of, *ante*, p. 210; Goods Bargained and Sold, *ante*, p. 221; Goods Sold and Delivered, *ante*, 223, *post*, Set-Off; Stoppage in Transitu; Vendor and Purchaser.

SALMON. *See* Fisheries, *ante*, p. 203.

SALVAGE. *See post*, Ship and Shipping.

SATISFACTION. 1 Abr. 88.

SALVAGE and Towage. *See* also Admiralty Court, *ante*, p. 10.

I. When Claimable, and to What Amount, p. 393.

II. Jurisdiction of Admiralty, and of Justices of County Courts. *See ante*, p. 154; and 32 & 33 Vic. c. 51, and *post*, Ship and Shipping.

III. Proceedings connected with, p. 394.

IV. Costs, p. 395.

I. When Claimable, and to what amount.[2]

[1] Where cause is shown against a rule in the first instance, the costs are in all cases in the discretion of the court, and will rarely be given. *Norris v. Carrington*, 16 C. B. N. S. 396. Where a defendant has left the country, and has not since been heard of, proof that a copy of a rule has been left at his place of residence, is sufficient service to entitle the plaintiff to issue execution against his goods. *Styrling v. Lloyd*, 9 L. T. N. S. 730. Where a rule *nisi* is discharged in one term, and nothing said as to costs, that rule cannot be added to in a following term by giving costs. *Reg. v. The Hearts of Oak Friendly Society*, Q. B. 14 L. T. N. S. 360.

[2] By the ancient law of the Court of Admiralty, as well as by statute law prior to 25 & 26 Vic. c. 63, s. 18, any stipulation by which a seaman agreed to abandon a claim for salvage was invalid. *The Pride of Canada*, 9 L. T. N. S. 546—Adm. The burden of proof is upon those who assert such an agreement to show, not merely the existence of the agreement, but that the seamen were fully aware of all its consequences. *Ib.* The rule that in the case of a derelict ship the salvors were entitled to a moiety of the value of the derelict, does not now prevail; and the fact of the ship being derelict is only to be considered as an ingredient in the degree of danger in which the property was. The reward for salvage services is matter of discretion. *The Scindia*, 1 L. R. P. C. 241. Hence, where a derelict vessel and cargo of the value of 1452*l.* was salved by a steamer, which, with her cargo, was of the value of 30,000*l.*, the 300*l.* for salvage was held not sufficient, and the same increased to 450*l.* *Papsayanni v. Hocquard—The True Blue*, 1 L. R. P. C. 250. *The United Kingdom, The Hercules, The Resolute, and The Relief v. The Sgrian*, 14 L. T. N. S. 833—Adm. To constitute a salvage service it is not necessary that the ship should be in absolute danger. It is sufficient if there was a state of difficulty and reasonable apprehension. *The Phantom*, 1 L. R. Adm. & Ecc. 58. Where no special risk has been incurred by the salvors, salvage reward is allotted upon a

II. Jurisdiction of Admiralty and of Justices.[1]

III. Proceedings Connected With.[2]

calculation of a fair remuneration for time and trouble. *The Otto Hermann*, 33 L. J. Adm. 189. When there is danger to the salvors, the risk of life receives the greatest remuneration. 32 L. J. Ad. 61. A lower scale is given where the case of the vessel is not one of present danger, but a case of urgency. The capability of steamers to perform services with greater rapidity and certainty entitles them, as salvors, to a higher scale of reward. *Ib.* The owners of the saved ship are not debarred from claiming salvage services, although the quantum of salvage may be affected by the fact of their also being charterers. *The Collier*, 1 L. R. Ad. & Ecc. 83. A passenger can render salvage services to the vessel, though his relation of passenger still continues; but such services must be of an extraordinary character, and beyond the line of his duty, to render him a salvor. *Hamilton E. Towle v. The Great Eastern*, 11 L. T. N. S. 516.—United States, D. C. Adm. Pumping and aiding in the working a ship would not be extraordinary services. *Ib.* *See* 2 Moore, P. C. 51. The words of 3 & 4 Vic. c. 65, s. 6, "a claim in the nature of towage," do not include a claim by a towed vessel against her tug for misconduct. The damage referred to by that section and by 24 Vic. c. 10, s. 7, is that which results from a collision. *The Robert Pow*, 9 L. T. N. S. 237; 32 L. J. Adm. 164. A contract by a steam-tug for towage may, from the danger in which the towed vessel is afterwards placed, and rescued by the tug, be superseded and converted into salvage service. *Ward v. M'Corkhill, The Minnehaha*, 15 Moore, P. C. C. 133. A contract entered into with a steam-tug, by the master of a grounded ship, to get the latter off and tow her to a certain place, which was just and proper at the time of making it, held to disentitle the tug to extra remuneration as salvage, although the time consumed and the trouble was much greater than anticipated. *The Cato*, Adm. 35 L. J. 116. A tug engaged under the ordinary contract to tow, may, by the performance of substantial salvage service in saving the ship towed from supervening danger, earn salvage reward, though not herself incurring risk. *The Pericles*, 1 B. & L. 80. *See The White Star*, 1 L. R. Ad. 68; *ib.* 54. The owners of the cargo are liable to contribute to that portion of the claim of salvors which arises from saving the lives of passengers, although the salvors may have rendered no direct benefit to the cargo, as the benefit to property is not a criterion of remuneration for life salvage. *Jusiliers*, 2 Moore, P. C. C. 51. The accident of the amount of salvage awarded exceeding the value of the salvage vessels is wholly immaterial, as the value of such vessels is not an element to detract from the value of the salvage service. *Ib.* Expenses are to be deducted in apportionment. *The Wigtownshire*, 36 L. J. Ad. 11.

[1] The 17 & 18 Vic. c. 104, s. 460, and 25 & 26 Vic. c. 63, s. 49, being read together, enact, that all disputes as to the amount of salvage, where either the sum claimed does not exceed 200*l.* or the value of the property saved does not exceed 1000*l.*, shall be referred to justices of the peace, and thereby in those cases exclude the jurisdiction of the Court of Admiralty. *The William and John*, 9 Jur. N. S. 284; 32 L. J. Adm. 102; 8 L. T. N. S. 56. By "the sum claimed" is meant the sum claimed before the dispute is referred. *Ib.* The words "disputes as to the amount of salvage" extend to cases where an agreement stipulating for a fixed amount has been made. *Ib.* The existence of an agreement does not confer jurisdiction upon the Court of Admiralty. A county court judge may exercise this jurisdiction where there has been a salvage agreement for a fixed sum. *In re Beadnell v. Beeson*, 37 L. J. Rep. Q. B. 171. The meaning of the words "sum in dispute," in sect. 46 of the 17 & 18 Vic. c. 104, is not to be limited to the sum awarded by the justices. *The Andrew Wilson*, 9 Jur. N. S. 474; 32 L. J. Adm. 104; 8 L. T. N. S. 177. The Court of Admiralty will not, on appeal, interfere with the award of the justices, except in extreme cases. *Ib.* *The Louisa*, 9 Jur. N. S. 676; 11 W. R. 614—Adm. The word "owners," in sect. 460 of 17 & 18 Vic. c. 104, means whoever is interested in the property at the time, and therefore where there is a dispute between the salvors and a mortgagee of a vessel, the justices have jurisdiction. *Ib.* Admiralty cinque ports hath jurisdiction where value of property under 1000*l.* *The Jeane Paul*, 36 L. J. Adm. 11. This to be ascertained when it is brought into a place of safety by the salvors. *The Stella*, *ib.* 13. When in a claim for salvage, heard before magistrates, the sum in dispute exceeds 50*l.*, the Admiralty has jurisdiction to entertain an appeal, even though the value of the property salved is under 1000*l.* *The Generous*, 37 L. J. Ad. 37. See Admiralty Suits Act, 1868.

[2] No action is maintainable by a seaman for his share of salvage awarded by two justices, under 17 & 18 Vic. c. 104, s. 460, and paid to the owner of the salvor vessel. *Atkinson v. Woodhall*, 1 H. & C. 170. The owner of the vessel offered a seaman less than he claimed as his share, which the seaman refused:—*Held*, no evidence of money received to the seaman's use, or of an account stated. *Ib.* Negligence, though not specifically pleaded in the answer, may be proved to negative a claim to salvage upon a simple traverse of salvage services, but not fraud on part of salvors. *Ward v. M'Corkill*, 13 Moore, P. C. C. 133. After release of salved property by the receiver of

IV. Costs.[1]

SAVINGS' BANKS.[2] 6 Abr. 359.

SCHOOL and SCHOOLMASTER. 6 Abr. 360.

SCIENTER. *See* Animals, *ante*, p. 19; *post*, Vendor and Purchaser; Warranty.

SCIRE FACIAS.[3] 6 Abr. 362.

SCOTCH LAW.[4]

SCRIP. 6 Abr. 363. *See post*, Stock.

SCULPTURE. 3 Abr. 563. *See* Copyright, and 25 & 26 Vic. c. 68.

SEA-BIRDS. *See* 32 & 33 Vic. c. 17.

SEA-SHORE.[5]

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wrecks, upon security to his satisfaction, salvors have no right to detain the property, or to arrest it by warrant of the Admiralty Court:—Release, in such case, granted, with costs, against the salvors. *The Lady Katherine Barham*, 1 Lushington, 404. The appraisement of the cargo salved, made under the authority of the court, will be adhered to in fixing the amount of salvage, although the cargo may have been sold by the owner for much less. *The Cargo ex Venus*, 1 L. R. Adm. 50. Salvors can only deduct expenses stated in the petition. *The Wigtonshire*, 86 L. J. Ad. 11. Appeals on the question of *quantum* of salvage are not to be encouraged. *The "Carrier Dove,"* 2 Moore, P. C. C. 243.

[1] Though the Court of Admiralty has no jurisdiction in salvage suits where the value of the property salved is under 1000*l.*, it has the power to condemn in costs and damages in cases of a wrongful arrest. *The Kate*, 10 Jur. N. S. 444; 33 L. J. Adm. 122; 9 L. T. N. S. 782. The court will not decree damages, unless there has been *crassa negligentia* in arresting. *Ib.* Salvors are entitled to the costs of a commission of appraisement when it appears that there is a substantial difference between the appraised value and that alleged by the defendants. *The Paul*, 35 L. J. Adm. 16. In a salvage suit, the defendants tendered a sum of 200*l.*, which was accepted, the claim being for a much larger amount. The court, acting on the discretion given by s. 460, 17 & 18 Vic. c. 104, gave plaintiff his costs. *The Germ*, Adm. 15 W. R. 937. The plaintiff, one of several salvors, sued for salvage services. The defendants tendered 40*l.*, "with costs up to time of tender," which the plaintiff refused. The defendants then resisted the claim, on the ground (which they failed to support) that the plaintiff had been party to a settlement of the whole claim with one of the co-salvors. The court overruled the tender, and gave 100*l.*:—*Held*, the case was not a fit one to be tried in the superior court; refused to certify for costs, under 17 & 18 Vic. c. 104. *The Comte Nesselrood*, 1 Lushington, 454. But the plaintiff was not entitled to his costs up to the time of tender. *Ib.* Although the sum awarded by the appellate court be under 200*l.*, costs will be allowed if the case be a fit one to be brought before such court. *Ward v. M'Corkill*, 15 Moore, P. C. C. 133.

[2] 26 & 27 Vic. c. 87 consolidates and amends the laws relating to savings' banks. 29 & 30 Vic. c. 5, amends the law as to the investments on account of savings' banks and post-office savings' banks, and 32 & 33 Vic. c. 59. 29 & 30 Vic. c. 43, regulates the establishment and management of savings' banks for seamen and mariners of the Royal Navy.

[3] A tender under protest may be a valid answer to a *sci. fa.* against a shareholder in a railway company. *Scott v. Uxbridge Railway Company*, 35 L. J. C. P. 295. It is no answer to an application in this court, under 8 & 9 Vic. c. 16, for a *scire facias* against a shareholder, that the Court of Queen's Bench has ordered execution to issue without a *scire facias* against the same shareholder at the suit of another judgment creditor of the company, if no payment has been made or tendered under such order. *Rigby v. the Dublin Trunk Railway Company*, 36 L. J. C. P. 282. Although the court may deem a shareholder not liable, they will allow a *sci. fa.* to issue, that the opinion of a court of error may be taken. *Guest v. Worcester Railway Company*, 38 L. J. C. P. 23.

[4] A Scotch debtor, who has obtained a warrant of protection and comes to England, is liable to be arrested on a *capias*, under the 1 & 2 Vic. c. 110, s. 3, when he is about to leave this country. *Dutton v. Hally*, 31 L. J. Q. B 297; 2 B. & S. 748. A set-off is a good defence where there are mutual credits between a bankrupt and a defendant, the Scotch law being that the trustee is only entitled to sue for the balance. *Macfarlane v. Norris*, 2 B. & S. 783; 31 L. J. 245.

[5] The bed of all navigable rivers where the

SEAWORTHY. 5 Abr. 174. *See* Insurance, p. 257.

SECONDARY Evidence. *See* Evidence, p. 191.

SECURITY for Costs. 3 Abr. 368. *See* Costs, p. 143.

SEDUCTION.[1]

SEPARATION, Judicial. 5 Abr. 366. *See* Marriage, *ante*, p. 308.

SEQUESTRATION.[2] 6 Abr. 366.

SESSIONS of the Peace. 6 Abr. 367.

I. Jurisdiction.
II. Proceedings at.
III. Appeal from.
IV. Costs.

I. Jurisdiction.[3]

tide flows and re-flows, and of all estuaries or arms of the sea, is vested in the crown, but subject to the right of navigation which belongs by law to the subjects of the realm, and of which the right to anchor forms a part. *Gann v. Free Fishers of Whitstable Company*, 11 H. L. Cas. 192: 35 L. J. C. P. 29. A grant from the crown does not of necessity pass the shore between low and high water-mark, but the words are capable of passing it, and whether the grant does or does not pass it is a question of fact depending upon acts of user and ownersnip. *Atty. Gen. v. Jones*, 33 L. J. Exch. 249; 2 H. & C. 347. There is no presumption that any part of the sea-shore is parochial, and it lies on those who assert its parochiability to prove it. *Bridgwater Trustees v. Bootle*, 2 L. R. Q. B. 4; 15 L. T. N. S. 351. The purchaser of lands is bound to inquire how all sea-walls necessary for the protection of his property are maintained. *Morland v. Cook*, 6 L. R. Eq. 252; 37 L. J. Ch. 325; 18 L. T. N. S. 496. The statute of Henry VIII. is not superseded by the later statute; therefore, where proceedings have been taken under the old act to compel a party to repair a sea-wall, it is not necessary to give notice to repair under the later act, to entitle the commissioners to recover the expenses of repair; and a mortgagor in possession is liable. *Reg. v. Baker*, 2 L. R. Q. B. 621; 36 L. J. 242.

[1] A daughter of the plaintiff was employed by the defendant as an out-door farm servant from February to November, being absent during the usual working hours from her father's house, but sleeping there and assisting in the household duties:—*Held*, that these facts constituted a sufficient service to support an action by the father. *Rist v. Faux*, 4 B. & S. 409; 10 Jur. N. S. 202. A daughter lived in her father's house, but worked during the day at the defendant's mill, receiving wages. She did washing and other duties for her father:—*Held*, sufficient evidence of service. *Ogden v. Lancashire*, 15 W. R. 158, Exch. *Evans v. Walters*, 36 L. J. C. P. 309.

[2] The profits of a benefice of a bankrupt clergyman do not vest in the assignees under the 24 & 25 Vic. c. 134, s. 135, until the assignees have obtained a sequestration, and the same has been published. *Hopkins v. Clarke*, 33 L. J. Q. B. 334; 11 L. T. N. S. 204 A creditor who has obtained a sequestration is not a creditor holding security within sect. 184 of the 12 & 13 Vic. c. 106. *Ib.*

[3] A court of quarter sessions, being a court of record, has power to punish for contempt; and, if that power is exercised on reasonable grounds, the Court of Queen's Bench will refuse to review the decision. *Reg. v. Middlesex* (*Justices*), *Pater*, 10 L. T. N. S. 376, Q. B. Though the fine be enforced on a barrister for using words ambiguous, but capable of amounting to a contempt of court. *Ib.* By the 5 & 6 Vic. c. 38, s. 1, the quarter sessions are prohibited from trying any persons for conspiracies, except conspiracies to commit any offence which the sessions have jurisdiction to try when committed by one person:—*Held*, that a count charging the defendants with conspiring, by divers false pretences to defraud, sufficiently showed a conspiracy within the jurisdiction of sessions. *Latham v. Reg.* (in error), 33 L. J. M. C. 197; 10 L. T. N. S. 571. Suicide is not murder within 24 & 25 Vic. c. 100, ss. 11 & 15, and therefore attempting to commit suicide is a misdemeanour triable at quarter sessions. *Reg. v. Burgess*, 9 Cox, C. C. 247; 1 L. & C. C. 258; 9 Jur. N. S. 28; 32 L. J. M. C. 55. The court has, by 24 & 25 Vic. c. 96, s. 115, jurisdiction over the offence of

II. Proceedings at.[1]

III. Appeal from.[2]

IV. Costs.[3]

SETTING-ASIDE. *See* Staying and Setting-Aside Proceedings

SET-OFF. 6 Abr. 369.

I. As to when allowed, and nature of Debt.

II. As regards particular Persons and Rights.

III. As to the mode of.

I. As to when allowed, and nature of Debt.[4]

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larceny when committed upon the high seas, if the offender is apprehended within the jurisdiction. *Reg. v. Peel*, 9 Cox, C. C. 220; 32 L. J. M. C. 65. The powers of amendment of grounds of removal or of appeal conferred upon the quarter sessions by 11 & 12 Vic. c. 31, s. 4, extend to the addition of an entirely new ground. *Reg. v. Llanganney*, 32 L. J. M. C. 265. 8 L. T. 696, Q. B. 4 B. & S. 311. The decisions of the sessions is final. *Ib.* An appeal lies to the quarter sessions from an order directing a highway to cease to be a highway. *Reg. v. Justices of Surrey*, 4 L. J. N. C. 261.

[1] The power of adjournment is inherent in the court of quarter sessions. *Reg. v. Westmoreland* (*J.*), 3 L. R. Q. B. 457; 37 L. J. M. C. 115; 18 L. J. N. S. 326. Where a district court of quarter sessions is held in each division of a county by adjournment, from one to the other, the division begins its sittings on the first day of the sessions for that division. *Reg. v. Sussex*, (*Justices*), 4 B. & S. 966; 34 L. J. M. C. 69; 11 L. T. N. S. 740, Ex. Ch. Orders were good upon their face, and cannot be questioned on any other ground than that of defects apparent on their face. *Fletton* (*Overseers*), 2 El. & El. 712.

[2] The court has jurisdiction to review the decision of a court of quarter sessions as to whether sufficient search has been made for a document to render secondary evidence of it receivable. *Reg. v. Hinckley* (*Overseers*), 3 B. & S. 885. By the practice of the Court of Common Pleas (unlike that of the Courts of Queen's Bench and Exchequer), an appellant, upon the hearing of a case stated, for the opinion of the court, under 12 & 13 Vic. c. 45, s. 11, is entitled to begin. *Sheppard v. Bradford*, 33 L. J. M. C. 182, C. P. An appeal from justices to Quarter Sessions is in the nature of a new trial, and fresh evidence is admissible on the hearing of the appeal. *Reg. v. Hall*, 1 L. R. Q. B. 632; 35 L. J. M. C. 251. A mandamus lies to compel the sessions to hear an appeal where the refusal amounts to a declining of jurisdiction. *Reg. v. Montgomeryshire* (*J.*), 19 L. T. 397. On an appeal from an order of removal made by borough justices, the notice improperly stated the appeal as to the county quarter sessions, whereas the borough sessions had exclusive jurisdiction; the borough session dismissed the appeal, giving respondents the costs:—*Held*, the borough sessions had power so to do. *Reg. v. Recorder of Leeds*, 3 Ell. & Ell. 561.

[3] An order under the 12 & 13 Vic. c. 45, s. 5, for payment of the costs of appeal made in a court of quarter sessions, directing that the costs be paid to the clerk of the peace instead of to the successful party, is good. *Gay v. Matthews*, 4 B. & S. 425; 32 L. J. M. C. 58, Ex. Ch. Upon an appeal against the conviction of an appellant as a rogue and vagabond under the 5 Geo. 4, c. 83, the sessions have power to give costs against the prosecutor, but not against the convicting justices though named as respondents. *Reg. v. Purdey*, 5 B. & S. 909; 34 L. J. M. C. 4; 11 L. T. 309, Q. B. Where an order of reference made by a court of quarter sessions under 12 & 13 Vic. c. 45, s. 13, is silent as to costs, the subsequent sessions, whose duty it is to enter the award, have no power to interfere, but must leave each party to bear his own costs. *Reg. v. West Riding*, 6 B. & S. 531; 34 L. J. M. C. 142; 12 L. T. N. S. 380, Q. B. The sessions can only order costs of an appeal as ancillary to the giving of final judgment; and where upon a special case nothing remains to be done by the sessions, it has no longer power to tax the costs. *Reg. v. Hampshire* (*Justices*), 32 L. J. M. C. 46.

[4] Cross-demands existing in separate rights cannot be set off even in equity except under special circumstances. *Stammers v. Elliott*, 37 L. J. Ch. 353; 18 L. T. N. S. 1. If a party, knowing all the circumstances, makes a payment without taking advantage of his right to make certain deductions at the time, he cannot afterwards claim a set-off for such omissions. *Turner, ex parte*, 11 L. T. N. S. 352. A consignee of goods under a bill of lading has no right to deduct from the freight the value of goods not delivered to him; his remedy is by cross-action. *Meyer v. Dresser*, 16 C. B. N. S.

II. As regards particular Persons and Rights.[1]

III. As to the mode of.[2]

SETTLEMENT, Marriage.[3] 5 Abr. 459.

SETTLEMENT and Removal of the Poor.

I. As to Settlement of.

(A) *By Birth.*[4]

646; 33 L. J. C. P. 289; 10 L. T. N. S. 612. To claim for damage to goods imported under 24 Vic. c. 10, s. 6, a claim of set-off for freight due under the bills of lading will not be allowed. *The Don Francisco*, 1 Lush. 468. No set-off is allowed in the Admiralty Court, save in the exceptional case of suits for mariners' wages. *Ib.* A set-off may be pleaded to a liquidated portion of a demand though not to the unliquidated residue. *Compton v. Walker*, 30 L. J. Q. B. 2 E. & E. 321.

[1] Where a factor sells goods to an agent without stating at the time that he is selling as a factor, and not on his own account, the principal of the agent has a right to set-off a debt due to him from the factor against the price of the goods, he being ignorant that the factor was not selling on his own account, although his agent knew it. *Dunn v. Norwood*, 14 C. B. N. S. 574; 32 L. J. C. P. 201; 8 L. T. N. S. 247; 17 C. B. 466; 34 L. J. C. P. 48. In an action for freight, the defendant pleaded a set-off, to which the plaintiff replied, on equitable grounds, that while the freight was in the course of being earned, he assigned it for value to A., of which the defendant, before the debt became due, and before the action had notice; and that the plaintiff was suing only as a trustee for A.: — *Held*, no answer to the plea. *Wilson v. Gabriel*, 4 B. & S. 243; 8 L. T. 502. One who buys goods of a persons whom he knows to be selling them as an agent, cannot set off in an action by the principal for their price a debt due to him from the agent, even though he did not at the time of the purchase know and had not the means of knowing who was the real owner. *Semenza v. Brinsley*, 18 C. B. N. S. 467; 11 Jur. N. S. 409; 34 L. J. C. P. 161. In an action for calls by liquidators of a company, registered with limited liability, a contributory may plead by way of set-off, under sec. 17 of 21 & 22 Vic. c. 60, a debt due from him to the company. *Garnett Gold Mining Company v. Sutton*, 3 B. & S. 321; 32 L. J. Q. B. 47. In an action by assignees, to recover the price of machinery supplied to the bankrupt, the court allowed the defendant to plead an equitable set-off for unliquidated damages arising out of the same contract. *Makeham v. Crow*, 15 C. B. N. S. 847. See *Baker v. Alexander*, 35 L. J. C. P. 217; 12 Jur. N. S. 692. The proportion of rent due from the bankrupt on the day of adjudication, or on the registration of a creditor's deed, is a good set-off to an action against the landlord of the bankrupt by his assignee. *Stanger v. Miller*, 1 L. R. Ex. 58; 36 L. J. Ex. 49. Where one of several co-debtors becomes bankrupt, and an action is brought against them to recover the joint debt, they cannot set off a cross debt due from the plaintiffs to them before such bankruptcy. *New Quebrada Com. (Lim.) v. Carr*, C. P. 283. A corporation kept an account at a banking-house. Afterwards, becoming invested with the functions of a local board of health, the corporation opened a separate account. The bank stopped payment, at which time there was due to the corporation, on account of its municipal affairs, about 5000*l.*, and there was due from the bank to the corporation about an equal sum in respect of the local board's account: — *Held*, that the corporation was entitled to set off one of those sums against the other. *Pedder v. Preston (Mayor, &c.)*, 9 Jur. N. S. 496.

[2] A plea, that by the law of Scotland, a defender is entitled to set off, and that it forms an answer to the plaintiff's claim, is a good plea. *M'Farlane v. Norris*, 2 B. & S. 783; 9 Jur. N. S. 74.

[3] The Court refused to carry out alterations in the settlement agreed upon between the parties, whose marriage had been dissolved, so as to extinguish the power of appointment given to the respondent by the settlement, or to affect the appointment of new trustees. *Davies v. Davies*, 37 L. J. P. & M. 17.

[4] A legitimate child whose parents have no settlement, though unemancipated has a settlement in the parish in which it is born. *Reg. v. the Inhabitants of Newchurch*, 3 B. & S. 107; 32 L. J. M. C. 19 Service by a minor in the metropolitan police force does not emancipate him from the parental authority, and his settlement continues to follow that of his father. *Reg. v. Selborne*, 29 L. J., M. C., 56. Proof of the marriage of the parents of a pauper in parish C., in 1779, of the baptism of the pauper in the parish church in 1780, of the baptism of another child in 1782, and of another in 1790, and that the last-mentioned child first remembered herself living in C. with her parents, is sufficient evidence of a birth settlement in C. *Reg. v. Crediton*, 27 L. J. M. C. 265. Where a mother, an Irishwoman, at the time of her admission into the workhouse, was chargeable to C., within 7 & 8 Vic. c. 101, s. 56, and under that section the child acquired a birth settlement in that parish; the mother and child being separated, the latter was held removable, although within the age of nurture. *Reg. v. St. Clement Danes*, 3 B. & S., 143.

(B) *By Marriage.*[1]

(C) *By Apprenticeship.*[2]

(D) *By renting a Tenement.*[3]

(E) *By paying Parochial Taxes or Rates.*[4]

(F) *By possessing an Estate.*[5]

(G) *By Acknowledgment.*[6]

II. Settlement of Lunatic Paupers.[7] *See* also, *ante*, p. 305.

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[1] Although *prima facie* a man's home is where his wife and family reside, yet where, prior to his marriage, a man lived as house-surgeon in an establishment in the parish of N., and after his marriage he continued so to reside there, and for the last six years he had lodgings for his wife and family, and was in the habit of visiting her from Saturday till Monday:—*Held*, that his residence was in the parish of N., and his wife and family were not irremovable. *Reg. v. Norwood*, 2 L. R. Q. B. 457; 36 L. J. (M. C.) 91. A man and his wife resided in a parish until they had required a status of irremovability. The husband died abroad:—*Held*, that the wife lost her status of irremovability. *Re Eastern and St. Mary's*, 36 L. J. M. C. 41.

[2] The articled clerk to an attorney is an "apprentice" within this section, and acquires a settlement by residence as such in the parish where he serves. *St. Pancras v. Clapham*, 2 Ell. & Ell. 742. A local statute provided that a corporation of the guardians of the poor should give bond for themselves and their successors to provide for sixteen poor boys, and put them out apprentices after they should have attained thirteen and before fifteen. A boy was bound by indenture, sealed with the common seal of the guardians, by whom the indenture was also executed, but the boy did not execute it; moreover, he was seventeen at the date of the indenture;—*Held*, that the indenture was invalid, not being executed by the boy; and, beyond the age particularised, he had acquired no settlement. *St. Nicholas* (*Churchwardens*) *v. St. Botolph* (*Churchwardens*), 12 C. B. N. S. 645; *Reg. v. Barton-upon-Irwell*, 32 L. J. M. C. 102.

[3] A house was hired, quarterly, at a yearly rent of 25*l.* to be paid quarterly; a quarter's notice to be given by either party:—*Held*, a renting of a tenement for a whole year within 6 Geo. 4, c. 57, *Hastings Poor Law Union v. St. James's, Clerkenwell*, 35 L. J. M. C. 65; 13 L. T. N. S. 362; 6 B. & S. 914; 1 L. R. Q. B. 38; *Paddington v. Willesden*, 32 L. J. M. C. 109; *Reg. v. St. Giles*, 4 B. & S. 509; *id.* 95. Although where a house is let out in parts to several tenants, each tenant may acquire a settlement who has a separate and exclusive outer entrance to which the other tenants are not entitled; yet, without this exclusive right, a settlement is not acquired. *Reg. v. Elswick*, 3 Ell. & Ell. 437; 30 L. J. M. C. 66. Where it is the custom to appoint a minister to officiate in a given place for one year certain, and to remove him after the lapse of three years, does not by residing in a house so taken gain a settlement by renting a tenement or by payment of rates. *Reg. v. Churchwardens of Tiverton*, 30 L. J. M. C. 79; 3 Ell. and Ell. 555. *See Reg. v. the Inhabitants of West Ardsley*, 32 L. J. M. C. 255, and 4 B. & S. 95.

[4] Notwithstanding the 35 Geo. 3, c. 101, it is necessary to establish that a settlement has been gained by a pauper, under the 3 & 4 Will. & M. c. 11, s. 6, by being charged with and paying parochial rates, to show an intention to charge him with the rates, on the part of the officers of the parish. *Reg. v. St. Anne* (*Westminster*), 2 Ell. and Ell. 485. An occupier of a house, who did not pay the whole amount of poor-rate with which he was charged, but only, by arrangement with the overseers, the fractional portion of the year's rate during which he continued to occupy the house:—*Held*, not to have gained a settlement by payment of poor-rate; but by the payment of the entire watch-rate he acquired such settlement. *Everton v. South Stoneham*, 2 Ell. & Ell. 771. The payment of property tax by a tenant of a house gives a legal settlement to the tenant, although he is entitled to deduct such payment from his rent. *St. George's v. Cambridge Union*, 3 L. R., Q. B. 1; 37 L. J. 17.

[5] A. agreed with B. to build a house on land belonging to B., in consideration of which undertaking, and of an annual rent-charge of 25*s.* a lease of the land for three lives was to be granted. The house was built at the cost of 85*l.*, and the lease granted of the rent-charge and the erection of the house on the land, being together of the pecuniary value to the grantor of more than 30*l.*:—*Held*, that A. thereby acquired a settlement under 9 Geo. 1, c. 7, s. 5. *Reg. v. Belford* (*Overseers*), 3 B. & and S. 662; *Overseers of Calverley v. Overseers of Bradford*, 32 L. J. M. S. 154; 12 L. T. N. S. 51.

[6] Relief to a child above sixteen, unemancipated, and residing with the parent, is not relief to the parent, under 4 & 5 Will. 4, c. 76, s. 56, so as to disentitle the latter, after a five years' residence, to the status of irremovability, under 9 & 10 Vic. c. 66, s. 1. *Reg. v. St. Mary*, 9 Jur. N. S. 155 Q. B. See *Reg. v. Elvet*, 2 Ell. & Ell. 266.

[7] *See* 26 and 27 Vic. c. 110, as to asylums for pauper lunatics; ss. 95 and 98, 16th &

III. As to Removal.

(A) *When and when not removable.*[1]

(B) *Order of Removal.*[2]

17th Vic. c. 97, as to expenses of removal of a pauper lunatic, apply where the wife of a man born in Scotland has no settlement, but becomes lunatic in England. *Clerk of the Peace v. Overseers of Shipham*, 3 B. & S. 507; 32 L. J. M. C. 83. The same act confers jurisdiction on justices to adjudicate on the settlement of a pauper lunatic confined in an asylum. *Reg. v. Overseers of Faversham*, 2 B. & S. 275; 31 L. J. M. C. 116. Where a parish is comprised in a union, under the 22 Geo. 3. c. 83, an order of justices, under 16 & 17 Vic. c. 97, s. 97, adjudging the settlement of a pauper lunatic confined in an asylum to be in that parish, and directing the guardians of the union to pay the costs of maintenance, &c., is made on the proper persons. *Reg. v. the Inhabitants of Bramley*, 31 L. J. R. N. S. M. C. 11; 1 B. & S. 732; *See* 32 L. J. M. C. 196.

[1] The 27 & 28 Vic. c. 105, after reciting that it is enacted in the 1st section of the 25 Vic. c. 55, that after the 25th March, 1862, the period of three years should be substituted for that of five years, specified in the 1st section of the 9 & 10 Vic. c. 66, and that the residence of a person in any part of a union should have the same effect in reference to the provisions of the said section as a residence in any parish; and that doubts exist as to the proper meaning of this latter provision, and it is desirable to remove the same; it is therefore declared and enacted, by sec. 1, that in the case of any poor person heretofore chargeable or hereafter becoming chargeable in any parish comprised in a union, not being the parish of his settlement, the period of time during which he shall have resided in the parish of the settlement, if in the same union, shall not be excluded in the computation of the time of residence required to render him exempt from removal under the statutes above referred to; by sec. 2, nothing herein contained shall apply to any order of removal made and executed before the passing of the Act 29th of July, 1864. By 29 and 30 Vic. c. 113, s. 17, in clause 3 of 24 & 25 Vic. c. 55, one year shall be substituted for three years. In order to constitute a residence within 9 & 10 Vic. c. 66, s. 1, and 24 & 25 Vic. c. 55, s. 1, it is not necessary that the residence should be in a house or any place usually appropriated to human habitation. *Reg. v. St. Leonard, Shoreditch*, 6 B. & S. 784; 1 L. R. Q. B. 21; 12 Jur. N. S. 292; 35 L. J. M. C. 48. The effect of s. 1, 24 & 25 Vic. c. 55, is to substitute the irremovability from a union for irremovability from a parish under s. 1, 9 & 10 Vict. c. 66. *Reg. v. Great Salkeld*, 10 Jur. N. S. 1101; 33 L. J. M. C. 185; 12 W. R. 875; 10 L. T. N. S. 524, Q. B. The effect of 27 & 28 Vic. c. 105, s. 1, in connexion with 9 & 10 Vic. c. 66, s. 1, and 24 & 25 Vic. c. 55, s. 1, is to render a pauper irremovable from his parish of residence within a union to his parish of settlement in the same union, although his term of three years' residence is computed by the time during which he lived in two or more parishes of the union, neither of which is his parish of settlement. *Reg. v. Bolton-le-Sands*, 35 L. J. M. C. 54; 13 W. R. 177, Q. B. Three years' residence in any part of a union renders a pauper irremovable, although the whole period of such residence precede the 25th of March, 1862; the 24 and 25 Vic. c. 55, s. 1, being retrospective in both its clauses. *Reg. v. Preston*, 9 Jur. N. S. 1038; 32 L. J. M. C. 180; 11 W. R. 644; 8 L. T. N. S. 274, Q. B.; 3 B. & S. 793. *Reg. v. Hendon (Overseers)*, 9 Jur. N. S. 1197; 32 L. J. M. C. 202; 11 W. R. 639; 8 L. T. N. S. 276, Q. B. *Salford v. Manchester*, 9 Jur. N. S. 821; 32 L. J. M. C. 107; 7 L. T. N. S. 823, Q. B.; 3 B. & S. 599. *Norwood v. St Pancras*, 37 L. J.; M. C. 91. The status of irremovability acquired by a husband does not survive to his widow and children. J. C. having a legal settlement in parish E., married and resided in parish M., and acquired the status of irremovability therefrom; he then enlisted, and he and his wife and children accompanied his regiment abroad, and he died abroad. His wife and children then returned to parish M.:—*Held*, that she and her children were removable to parish E. *Overseers of Easton v. Overseers of Marlborough*, 2 L. R. Q. B. 128; 36 L. J. M. C. 41. See *Reg. v. Thornton*, 2 Ell. & Ell. 788. Where a woman, who is residing separate from her husband and in a different parish, is sent to a lunatic asylum as a pauper lunatic under 16 & 17 Vic. c. 97, the order for her maintenance is properly made on the parish of her husband's settlement under sec. 97, and ought not to be made under sec. 102, on the union of the parish from which the husband is irremovable by reason of five years' residence. *Reg. v. the Guardians of East Retford*, 32 L. J. N S. M. C. 17. A pauper, having occupied lodgings in a parish, left the parish intending to return as soon as his trade became better; he did not retain his lodgings, but left some old clothes there in the hands of the landlord, and his lodgings were not occupied, and he could have had them at any time on his return. After three months' absence, he returned:—*Held*, that the pauper was not constructively resident, and that the absence formed a break in the residence. *Reg. v. the Guardians of Stourbridge*, 34 L. J. N. S. M. C. 179. See *Reg.* app. *v. the Guardians of the Glossop Union*, resp., 35 L. J. 156, Q. B. *Wellington (Overseers) v. Whitchurch (Overseers)*, 4 B. & S. 100; 10 Jur. N. S. 37; 32 L. J. M. C. 189.

[2] The effect of the 35 Geo. 3, c. 101, s. 1, is to repeal entirely sec. 1 of the 13 and 14

(C) *Suspension of Order of Removal.*[1]
(D) *Appeal against Order of Removal.*[2]

SEWERS. *See* Abatement of Nuisance; *ante*, p. 1; Negligence, *ante*, p. 331; Public Health, *ante*, p. 375.

I. Sewers generally, and Commissioners of.[3]

Car. 2. c. 12; and an order for the removal of a pauper is good, although neither of the two removing justices is of the quorum. *Reg. v. Llangian* (*Overseers*), 4 B. & S. 249; 32 L. J. M. C. 225; 8 L. T. N. S. 422, Q. B. Under sec. 4 of 11 and 12 Vic. c. 31, the sessions may amend, by the addition of an entirely new ground of removal or appeal; and their discretion is final. *Ib.* 10 Jur. N. S. 126, Q. B. Upon an application, under 35 Geo. 3, c. 101, s. 2, for a warrant of distress to levy the charges incurred by the suspension of an order of removal, a justice cannot inquire into the merits of the order directing payment, but is bound to enforce it by issuing his warrant. Even where, by reason of the amount ordered to be paid not exceeding 20*l.*, there is no appeal against the order. *Reg. v. Higginson*, 2 B. & S. 471. Secs. 1 and 2 of 28 & 29 Vic. c. 79, are confined to unions formed under 4 and 5 Will. 4, c. 76; where the order of removal is obtained by a parish not in such a union, to a parish in a union, the old form of the order of removal to "the churchwardens and overseers of the poor of the parish" is valid. *Reg. v. Northwick*, 2 L. R. Q. B. 383; 36 L. J. M. C. 57. An application to justices for an order for the costs of the maintenance of a pauper removed to the parish of settlement from the applicant parish, must be made within six months from the time when the matter of such information arose, as such information does not fall within the exemption as to time. *Hill v. Thorncroft*, 3 Ell. & Ell. 257.

[1] By 35 Geo. 3, c. 101, s. 2, where it shall appear that the poor person is unable to travel, by sickness or other infirmity, such order of removal may be suspended until the justices satisfied that it can be executed without danger; such suspension can only be made by them at the same time as the order of removal itself, they being after that time *functi officio*. *Reg. v. Llanllechid*, 2 Ell. & Ell. 530. Such suspension operates with respect to the pauper's family, as well as himself, that are not separated from him. *Reg. v. Sculcoates*, 3 L. J. N. 245; 4 L. R. Q. B. 32. On the hearing of a complaint, under 35 Geo. 3, c. 101, s. 2, for non-compliance with an order by two justices for the payment of the charges incurred by the suspension of an order of removal, the justice cannot inquire into the propriety of the order; if good on the face of it he is bound to enforce it. *Reg. v. Higginson*, 31 L. J. M. C. 189; 2 B. & S. 471.

[2] Notice of appeal against an order of settlement and maintenance of a criminal lunatic, signed "H. H., clerk to the aforesaid guardians," is sufficient. *Reg. v. Newport Union* (*Guardians*), 33 L. J. M. C. 155; 10 L. T. N. S. 384. Within twenty-one days after the service of the order, a copy of the depositions was applied for, and notice of appeal given within fourteen days after the copy was sent, is given in time. *Ib.* By sec. 108 of 16 and 17 Vic. c. 97, any union or parish may appeal against any order adjudging the settlement of any lunatic confined in an asylum, to the quarter sessions for the county in which the union or parish obtaining the order is situate, or if the parish or union extend into several jurisdictions, then to the quarter sessions of the county or borough in which the asylum is situate. An order, under sec. 97, adjudging the settlement of a pauper lunatic confined in an asylum, was obtained by a union, consisting of parishes partly in a borough, which was wholly in one county, but had separate quarter sessions, and partly of parishes in the county at large, an appeal against an order, under sec. 108 of the statute, is to the quarter sessions, and not to those of the borough in which the asylum was situate. *Reg. v. the Justices of Kent*, 1 L. R. Q. B. 385; 35 L. J. 174; 14 L. T. 331. *Reg. v. Berwick* (*Recorder*), 7 L. T. N. S. 670. Notice "intended to appeal against an order of removal," not a valid notice of appeal. *Reg. v. St. Alkmund*, 3 B. & S. 347; 32 L. J. M. C. 99; 7 L. T. N. S. 622. The 81st sec. of 4 & 5 Wm. 4, c. 76, is to be construed so that the appellant may deliver the grounds of appeal, either with the notice of appeal, or fourteen days before the sessions begin. These statutes fix the maximum of delay, after which the appeal is barred, but they do not give the appellant a right to the periods of twenty-one days and fourteen days, except when those periods elapse before the beginning of the sessions, but the justices respit the appeal. *Reg. v. Justices of Sussex*, 34 L. J. M. C. 69. Where a copy of depositions on which an order is made, is applied for, it should be to the clerk of the justices, and not to the overseers of the removing parish. *Reg. v. St. Alkmund*, 3 B. & S. 347; 32 L. J. M. C. 99; 7 L. T. N. S. 622. When justices under sec. 4, 9 & 10 Vic. c. 66, grant a warrant for the removal of a sick pauper, stating they are satisfied that the sickness is such as to produce permanent disability, their decision as to the permanence of the illness is conclusive. *Reg. v. St. Mary and St. Andrew, Whittlesey*, 3 B. & S. 432; 9 Jur. N. S. 820; 32 L. J. M. C. 78; 7 L. T. N. S. 676; but this applies only to the case of sickness of the person removed. *Reg. v. St. George, Middlesex*, 2 B. & S. 317. *Reg. v. Newport Poor Law Union*, 10 Jur. N. S. 516; 33 L. J. M. C. 155; 10 L. T. N. S. 384; 4 B. & S. 966.

[3] Commissioners under an Inclosure Act,

II. Statutes relating to.[1]

III. Board of Health; Town Improvement and Board of Works.[2]

IV. Of Rates.[3]

V. Compensation for Injuries connected with.[4]

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unless specially authorised, have no power by their award to throw any liability on persons for the making or repairing of public sewers, other than that *ratione tenuræ*, or by reason of benefit received or loss avoided; and a presentment found on such an award would be bad. *Biglin v. Wylie*, 36 L. J. Q. B. 307. Under 3 & 4 Wm. 4, c. 22, s. 13, no order in respect of repairs can be made upon a person who becomes owner of lands subsequently to the date of the commission. *Reg. v. Warton*, 2 B. & S. 719; 31 L. J. Q. B. 265. No notice had been given to a defendant to do certain repairs as provided by the 3 & 4 Wm. 4, c. 22, s. 15. He was a mortgagor in possession by his tenant, and in receipt of the rents and profits; the jury presented these facts:—*Held*, that the proceedings were regular, and might be supported under 23 Henry 8, c. 5. *R. v. Baker*, 36 L. J. Q. B. 242.

[1] *See* 3 Wm. 4, c. 22; 12 & 13 Vic. c. 50, amending law relating to. As to house drainage, 18 & 19 Vic. c. 30; as to application of sewage, 28 & 29 *ib.* c. 75; 30 & 31 *ib.* c. 113.

[2] A natural stream or watercourse, of about a mile and a half in length, from fifteen to fourteen feet in breadth, and from five to three feet in depth, flowed through arable land into a river. It received at one point the drainage of two or three houses:—*Held*, not a "sewer" within the Act of 1848. *Reg. v. The Local Board of Health of Godmanchester*, 5 B. & S. 936; 1 L. R. Q. B. 328; 35 L. J. 125, Q. B. in error. Nor is a tidal creek, though having been mainly used for discharging into it the sewage from the neighbouring houses, a drain or sewer within the 10 & 11 Vic c. 34. *Pentney v. The Lynn Commissioners*, 13 W. R. 983. The 10 & 11 Vic. c. 34, s. 24, empowering the commissioners of sewers to empty the sewage of towns into the sea or public rivers, or to accumulate it for sale for agricultural purposes, does not authorise them to commit a nuisance by so doing; the last sentence of the section applies to all the alternatives. *Attorney-General v. Mayor, &c., of Kingston*, 34 L. J. Ch. 481. Under the 22nd sect., Nuisance Act, 1855, the local authorities in laying down a new sewer, are not bound to follow an old watercourse, but may carry the new sewer across enclosed land adjoining such watercourse. *Derby (Earl) v. Bury Commissioners*, 38 L. J. Ex. 100; *see* 34 L. J. M. C. 216. A sewer made by the Metropolitan commissioners of sewers under the powers vested in them by 11 & 12 Vic. c. 112, was transferred to the Metropolitan Board of Works by 18 & 19 Vic. c. 120:—*Held*, that these acts gave the board no right to any lateral support for the sewer by the land of the adjacent owners. *Metropolitan Board of Works v. Metropolitan R. C.*, 3 L. R. C. P. 612; 37 L. J. C. P. 281; 19 L. T. N. S. 744,—Ex. *See Ferrar v. Commissioners of Sewers*, 38 L. J. Q. B. 102.

[3] Under 18 & 19 Vic. c. 120, property is exempt from sewers rates where it derives no benefit therefrom. But rateability once established, no question as to the exact amount of benefit based upon the particular use to which the property has been applied can arise. *Reg. v. Head*, 9 Jur. N. S. 871,—Q. B. The old law of sewers, that to render property liable to be rated it must receive a benefit from the expenditure, and the expenditure be apportioned according to the benefit derived, does not hold good with reference to an apportionment of a rate by the Metropolitan Board of Works over the different parishes comprised within a particular sewage district. 7 Ell. & Bl. 964. *Pew v. Metropolitan Board of Works*, 11 Jur. N. S. Q. B. *Reg. v. Bodkin*, 3 E. & E. 271. And held that the justices were right, as 20 & 21 Vic. c. 43, is inapplicable, where appeal against the order of justices for non-payment of rate would, in effect, be an appeal against the rate; which appeal, by sec. 135 of the 11 & 12 Vic. c. 63, lay only to the quarter sessions. *Reg. v. Gloucestershire (Justices)*, 2 El. & El. 420. The Metropolitan Board of Works is not rateable to the poor rate or the general district rate in respect of the land occupied by the sewers; but they are rateable in respect of land and buildings which are occupied by them in connexion with the sewers, and which have an occupation value. *Reg. v. Metropolitan Board of Works*, 38 L. J. M. C. 24; 4 L. R. Q. B. 15; 19 L. T. N. S. 348.

[4] Although an action may not lie against commissioners of sewers for damage done, a party may be entitled to compensation for injuriously affecting his premises. *Jerrow v. Commissioners of Sewers*, 3 L. J. N.,—247. The liability of the commissioners of sewers to compensate B. for damage done, is transferred to the Metropolitan Board of Works by the 18 & 19 Vic. c. 120, and the claim may be enforced against them. *In re Pettiward*, 19 C. B. 489; 34 L. J. C. P. 301; 12 L. T. N. S. 764; *see* 6 B. & S. 235. Commissioners were empowered to carry sewers, if necessary, through inclosed lands, making compensation to the owners, and giving twenty-eight days' notice before commencing,—parties interested having a right of appeal to the sessions:—*Held*, that in a case relating to the district, the local act must be taken into consideration together with the general Act of 1855. *Ib.*, 37 L. J. M. C.

SHARES. *See* Joint-Stock Company; Railway; and *post*, Stock-Broker and Stock Exchange.

SHERIFFS. 6 Abr. 424. *See* also *ante* Capias, p. 90; Escape, p. 188; Fieri Facias, p. 201.

I. Rights, Duties, and Liabilities.[1]

II. Fees, Poundage, and Expenses of.[2]

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SHIP AND SHIPPING. 6 Abr. 430. *See* also, *ante*, Admiralty; Average; Bill of Lading; Bottomry and Respondentia; Charter-Party; Demurrage; Freight; Harbour; Insurance; Negligence; Pilot; Post; Stoppage in Transitu; Tolls; Wharf.

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[1] The mere sale by a sheriff (not in market overt), under a *fi. fa.*, of a chattel let to the execution debtor, without notice of the owner's interest in it, is not a conversion or ground of action against the sheriff, but an absolute sale, to a purchaser; and a user by the purchaser, causing damage to the chattel, constitutes a cause of action. *The Lancashire Waggon Co. v. Fitzhugh*, 30 L. J. Ex. 231; 6 H. & N. 502. Nor is he liable for not seizing goods the existence of which in his bailiwick he has no notice, though he uses all due diligence. *Yourrell v. Proby*, 2 Ir. R. C. L. 460. No action lies against the sheriff for arresting a person having a certificate of protection under Bankrupt Act, 1861, s. 198. *Ames v. Waterlow*, 4 L. J. N. C. 238; *see Hargreaves v. Armitage*, 38 L. J. Q. B. 46. *Dignam v. Bailey*, *ib.* 218. The interference of debtor does not make the officer his agent, and the sheriff is not relieved from his liability in respect of the negligent conduct of his officer in conducting the sale. *Wright v. Child*, 1 L. R. Ex. 358; 35 L. J. Ex. 209. It is no excuse for a sheriff not arresting under a *ca. sa.*, the debtor produced a certificate of a deed of arrangement which he had omitted to plead. *Godwin v. Stone*, 38 L. J. Ex. 153.

[2] The sheriff, previous to a sale by public auction, under a writ of *fi. fa.*, having issued advertisements of such sale, claimed to deduct from the proceeds of the sale the costs of these advertisements, under 24 & 25 Vic. c. 134, ss. 73, 74:—*Held*, not entitled to do so, his charges being regulated by 1 Vic. c. 55. *Braithwaite v. Marriott*, 32 L. J. Ex. 24; 1 H. & C. 591. The sheriff having seized under a *fi. fa.*, notice was given of a prior act of bankruptcy by the debtor, and of an adjudication in bankruptcy, the messenger took possession of the goods, *held*, the sheriff is not entitled to a rule calling upon the assignees to pay him the expenses of preparing for a sale of the goods. *Searle v. Blaise*, 14 Com. B. Rep. N. S. 856. Where, after seizure of goods, but before sale, the judgment and subsequent proceedings are set aside, and the goods not sold, the sheriff is not entitled to poundage. *Miles v. Harris*, 31 L. J. C. P. 361; 12 C. B. 550. The following fees may be taken by the sheriffs, &c., under 1 Vic. c. 55: by sheriff for attending in court on common jury cause or issue, the sum of 10*s.* 6*d.*; for attending in court on the trial of every cause or issue by a special jury, under the 15 & 16 Vic. c. 56, s. 108, 1*l.* 1*s.* *Reg. Gen.* 1864.

I. Characteristics of British Ships and Ownership.

(A) Principal statutes relating to—General Shipping Act, 17 & 18 Vic. c. 104; 18 & 19 Vic. c. 91; 25 & 26 *ib.* c. 63; 30 & 31 *ib.* c. 124. Merchant Seamen's Act, 8 & 9 Vic. c. 116; 13 & 14 *ib.* c. 93; 14 & 15 *ib.* cc. 25, 102. Officers of, 24 & 25 Vic. c. 129. Passenger ships, 12 & 13 Vic. c. 33; 14 & 15 *ib.* c. 1. Shipping, colonial, 32 & 33 Vic c. 11. Shipping dues exemption, 30 & 31 Vic. c. 15; 32 & 33 *ib.* c. 62.

(B) *Ownership, how acquired.*[1]

II. Board of Trade and Marine Boards.[2]

III. Registration of British Ships.[3]

IV. As to Owners.

(A) *Rights, Duties, and Liabilities of.*[4]

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[1] The property in a ship passes, as between the vendor and his assignees and the vendee, by a bill of sale, although the transfer be not registered pursuant to the act, 1854. *Stapleton v. Haymen*, 33 L. J. Ex. 170; 2 Hurls. & C. 918. Where a bill of sale of a ship has been executed in the form prescribed by s. 55, 17 & 18 Vic. c. 104, the 66th s. does not prevent the owners from showing that the transfer, though absolute in its terms, was intended as a security only. *Ward v. Beck*, 13 C. B. N. S. 668; 32 L. J. C. P. 113. The 25 & 26 Vic. c. 63, s. 3, is a declaratory enactment that this is the true interpretation. *Ib.* See *Johnson v. Royal Mail Co.*, 3 L. R. C. P. 38; 37 L. J. 33. The guardian of an infant owner has no power under s. 99 to mortgage or sell the ship. *Michael v. Fripp*, 38 L. J. Ch. 29. See *Stapleton v. Haynes*, *supra*. A mortgage of a vessel carries with it the freight, and the mortgagee intervening by taking possession, or by an act equivalent to taking possession, before the freight becomes payable, is entitled as against the mortgagor, or his assignees in bankruptcy, to receive it. *Rusden v. Pope*, 3 L. R. Ex. 269; 37 L. J. Ex. 137; 18 L. T. N. S. 651. See *Ex parte Baker*, 18 L. T. 313 C.

[2] Sec. 29, 17 & 18 Vic. c. 104, s. 23, by authorising the commissioners, with the sanction of the Board of Trade, to alter the tonnage rules, does not empower them to do away with the distinctions between the different kinds of steam-vessels in calculating the deductions from tonnage in respect of machinery, &c. *City of Dublin Packet Co. v. Thompson*, 1 L. R. 355; 19 C. B. 553; 34 L. J. C. P. 316. Wilful and corrupt false swearing before a local marine board lawfully constituted to an inquiry then being lawfully investigated is perjury, and indictable as such. *Reg. v. Tomlinson*, 2 L. R. C. C. R. 49; 12 Jur. N. S. 945; 15 L. T. N. S. 188. Such a board has a discretionary power as to granting summonses for witnesses. *Reg. v. Collingridge*, 34 L. J. Q. B. 9.

[3] The duty to register a transfer rests with the vendee; the bill of sale entirely divests the title of the vendor; immediately on the execution of the bill of sale the vendor becomes entitled to all the benefits of ownership, and he takes with them all the concurrent liabilities. *The Spirit of the Ocean*, 34 L. J., Ad. 74; 12 L. T. N. S. 239. The right construction of 17 & 18 Vic. c. 104, ss. 55–66, 25 & 26 Vic. c. 63, s. 3, is, that the court may examine the real character of the transaction, and treat as a mortgage that which is, on the face of it, an absolute transfer, if such was the intention of the parties. *The "Innisfallen,"* L. R. Ad. & Ecc. 72; 35 L. J. 110. If one who is sole owner and captain of a ship pledge the certificate of registry of the ship for good consideration, he may nevertheless re-demand the document for the purposes of navigation; and if it is not delivered to him on request, he may maintain an action against the pledgee; for the detention is made unlawful by section 50 of the Act, 1854. *Wiley v. Crawford* (Ex. Ch.), 30 L. J. Q. B. 319; 1 Best & S. 253, 265. The production of a ship's registry, whereby a party is shown to be owner, is evidence from which, when unexplained, a jury may properly draw the inference that such owner employed the person actually in charge of the ship. *Hibbs v. Ross*, 1 L. R. Q. B. 534; 12 Jur. N. S. 812; 35 L. J. Q. B. 193; 14 W. R. 914; 15 L. T. N. S. 67.

[4] A managing owner of a vessel has power to release the vessel from arrest under an order of the Court of Admiralty, in order that she may prosecute her voyage and earn freight; and he is not bound to do this at his own expense, but by procuring bail for damages and costs. *Barker v. Highley*, 15 C. B. N. S. 27; 10 Jur. N. S. 391; 32 L. J. C. P. 270. It is the duty of the owner of a vessel to stow the cargo with as much skill as a competent stevedore can do. *The Anglo-African Company v. Lamzed*, 12 Jur. N. S. 294, C. P. *Sandeman v. Saurr*, 36 L. J. Q. B. 58. On an allegation that damage to cargo originated from defective stowage, and heat and fermentation arising from the cargo being stowed in too close conjunction with other cargo, the plaintiffs must establish affirmatively that the cargo, on its arrival at

(B) *Part-Owners.*[1]

V. As to Master and Crew.

(A) *Authority and Duties of Master.*[2]

its port of destination, was in a damaged condition; and that the onus then falls on the ship to prove that the original stowage was good, and that the perils of the sea, subsequently occurring, created the damage. *The Alexandra*, 14 L. T. N. S. 742, Adm. A vessel, foreign-owned at the time when necessaries are supplied to her, cannot by a subsequent sale change her legal position so as to deprive the person supplying the necessaries of the remedies given by the 3 & 4 Vic. c. 65, s. 6. *The Princess Charlotte*, 33 L. J. Adm. 188. The term domiciled in the 24 Vic. c. 10, s. 5, is used in its known legal sense; and an action for necessaries will not lie against a ship, the owner of which is temporarily absent from this country. *The Pacific*, 33 L. J. Adm. 120; 10 L. T. N. S. 541. The institution of a suit as a cause of necessaries does not estop the plaintiff from afterwards pleading and proving that his claim is in respect of repairs; but the title of the cause must be amended. *The Skipwith*, 10 L. T. 43, Adm. A liability for the supply of necessaries before transfer follows the ship into the hands of an innocent owner. It makes no difference that the transferee is a foreigner resident abroad and the purchaser a British resident. *The Ella*, 32 L. J. N. S. Prob. & M. 211. A subsequent mortgagee is liable for repairs previously done to a mortgaged vessel. *The Skipwith*, 10 Jur. 445; 10 L. T. 43, Adm. The ground of forfeiture of the statutory exemption from unlimited liability is personal blame; the fault of one owner does not, therefore, involve forfeiture by his co-owners. *The Spirit of the Ocean*, 34 L. J. Adm. 74. The liability of the owner to pay for repairs and equipments ordered by the master depends, not upon the ground of ownership of the vessel, but upon the ground of a contract made with the vendor by a person who was the owner's agent for the purpose. *The Great Eastern*, 2 L. R. Adm. 88; 17 L. T. N. S. 667. The master's contracts cannot bind the owner, unless authority has been actually given to him; or unless the owner has, by word or deed, held out the master as his agent, and thereby induced the vendor to supply the necessaries upon the credit of the owner. *Ib.* In tort possession is evidence for the jury of liability. *Hibbs v. Ross*, 35 L. J. Q. B. 193; 1 L. R. 534.

[1] An express authority is necessary from a part-owner of a ship to the ship's husband to order works not necessary as repairs; but such authority once given cannot be revoked after it has been acted upon. *Chappell v. Bray*, 30 L. J. Ex. 24; 6 H. & N. 145. Where the master is part-owner, but has the entire control and management of the ship, paying to his co-owner a third of the net profits, it is competent to him to sue in his own name. *Cawthron v. Trickett*, 15 C. B. 754; 33 L. J. 182; 9 L. T. N. S. 609.

[2] The power of a master to bind his owners personally is but a branch of the general law of agency; and where the master of a ship contracts as such in a foreign port for a foreigner, his authority to bind his owners is that conferred by the law of the country to which the ship belongs, as shown by her flag. *Lloyd v. Guibert*, 10 Jur. N. S. 949; 33 L. J. Q. B. 241; 10 L. T. N. S. 570. *Priestley v. Fernie*, 34 L. J. 172. The claim which a master has for his services and disbursements amounts to a maritime lien, and is not impaired by the fact that the person supplying him had a fraudulent possession of the vessel. *The Edwin*, 33 L. J. Adm. 197. But the lien does not attach where there is merely a liability, as a bill drawn by him upon the owner and dishonoured. *Ib.* Where a ship is by perils of the sea so much damaged as to be incapable of repair, except at an expense exceeding her value, together with the freight, when repaired, the master is justified in abandoning the voyage, and is not bound as agent to send the goods on. So he may, under such circumstances, sell the vessel. *De Cuadra v. Swann*, 16 C. B. N. S. 772. *The Gipsy*, 33 L. J. Adm. 195; 11 L. T. 351, Adm. The master of a ship having punished some of his crew for insubordination, others of the crew charged him with murder; this charge was investigated and dismissed:—*Held*, he was entitled as against the owners for costs of his defence. *The James Siddon*, L. R. Adm. & Ecc. 62. The captain of a ship has authority to exercise so much force as is necessary for the safety of the ship. *Aldworth v. Stewart*, 14 L. T. 862. The master has no power, under his general authority, to draw bills of lading making the freight payable to other than his owner. *Reynolds v. Jex*, 34 L. J. Q. B. 251; 7 B. & S. 83. *De Cuadra v. Swann*, 16 C. B. 772. The law will presume that the terms of a master's engagement for one voyage extend to a succeeding voyage performed without a new agreement, express or clearly implied. *The Gananoque*, 1 Lush. 448. A master is entitled to sue the ship for wages as earned on board the ship, if he performed the duties of master, although during his service he did not sleep on board, and many of his duties were performed on shore. *The Chieftain*, 1 B. & L. 104. He does not forfeit his wages by occasional drunkenness, nor by mere errors of judgment. *The Atlantic*, 1 Lush. 566. The Admiralty has power, on an application by the owner or part-owner, &c., to remove the master of a ship. *The Royalist*, 1 B. & L. 46. Under 24 & 25 Vic. c. 16, s. 10, a claim by a

(B) *Liabilities of Master.*[1]

(C) *Rights and Duties of Crew.*[2]

VII. Ship-Brokers.[3]

IX. Conveyance of Passengers.[4]

XII. Liens connected with.[5]

XIV. Legal Proceedings connected with.[6] And *see* Admiralty; Navigation; Salvage. As to Evidence, *see ante*, p. 404.

master for disbursement creates a maritime right, and ranks prior to the claim of a mortgagee of ship. *The Mary Anne*, 35 L. J. Ad. 6. *The Salacia*, 9 Jur. N. S. 27; 8 L. T. N. S. 91, Adm. Plaintiff, who was the consignee of wine, was not ready till part had been landed; being then ready, he demanded delivery of the residue, but the master (although no additional expense would have been incurred) refused to deliver to him, and landed the residue at his expense, claiming a right so to do as he was not ready before any goods were landed:—*Held*, the master was wrong, and plaintiff was entitled to have the residue delivered to him. *Wilson v. The London Steam Navigation Company*, 35 L. J. C. 9. Where a question is raised as to the duty of the master in a port of distress to have transhipped the cargo, his first duty is to carry his cargo to its port of destination. *Durantz v. Hart*, 33 L. J. Adm. 116; 10 L. T. 206. P. C.

[1] A master is not responsible, in the absence of neglect, for deficiency in the goods shipped by him. *Bradley v. Dunipace*, 31 L. J. Ex. 210. An attempt by the master of a ship to defraud is sufficient ground to induce the court to act under s. 240, 17 & 18 Vic. c. 104, and to order his removal. *The Royalist*, 32 L. J. Adm. 105. The power of the court is not limited to the offences mentioned in s. 239. *Ib.*

[2] Where the amount of wages due to a seaman was greatly lessened by a depreciation of the currency, and it did not appear at what rate such wages were to be calculated, the court construed the contract most strongly in favour of the seaman. *The Nonpareil*, 33 L. J. R. P. M. & A. 201. On a wreck the seamen are bound, by their contract, to do their utmost to save the ship and cargo; but the contract of service may be terminated either by final abandonment or by discharge given by the master. *The Warrior*, 1 Lush. 476. Constant drunkenness, or nonperformance of duty ascribed to it, does, but occasional intoxication does not, work a forfeiture of wages. *The Atlantic*, 9 Jur. 183; 7 L. T. 647, Adm. Nor will an error in judgment work a forfeiture of wages. *Ib.* Where, on the death of the captain during the voyage, the chief mate becomes captain, the latter has authority to appoint a seaman to the post of second mate, and is binding on the owners, notwithstanding no alteration be made in the articles under which the seaman shipped. *Hanson v. Royden*, 37 L. J. C. P. 66; 3 L. R. 47. The sections coming under the head of "Discipline," in 17 & 18 Vic. c. 104, have reference to British ships alone; and s. 257 renders liable to a penalty every person who wilfully harbours or secretes any seaman or apprentice who has deserted from his ship. *Leary v. Lloyd*, 3 El. & El. 178. As to persuading seamen not to join ship, see *Austin v. Olsen*, 3 L. R. Q. B. 208; 37 L. J. M. C. 34; 18 L. T. 537.

[3] The question as to liability for commission is a question for the jury, not of law. *Kynaston v. Nicholson*, 8 L. T. N. S. 671. See *Somes v. Jenkins*, 14 L. T. 519, Q. B.

[4] 18 & 19 Vic. c. 119, amended by 26 & 27 *ib.* c. 51. Shipping Act, 1854, Part IV.

[5] A claim for freight gives the master a possessory lien at common law, not only for freight due, but also for general average. The lien for freight is regarded in the same light as salvage-service, and, as between master and a bondholder, takes precedence of an antecedent bond. *The cargo ex Galam*, 33 L. J. P. & M. 97. But he has no lien on the ship or freight for wages, or for any expenditure which he may make in the ordinary discharge of his duties as master, for the performance of the voyage. But where he makes a special contract *ultra vires*, to fulfil which he incurs special expenses, if the owner adopts the benefit of that contract, he must, in equity, also bear its burthens. *Bristow v. Whitmore*, 9 H. L. Cas. 201. If the consignee of a cargo charters a vessel for the shipment of it, and properly incurs expenses, he is entitled to a lien on the cargo and the proceeds. So a person other than the consignee who has advanced money for the shipment of the cargo, with the consent of the principal. *Young v. Neill*, 9 L. T. N. S. 9. *See* 3 L. R. C. P. 38; 37 L. J. 33. As to an agent's lien for freight, see *Pearson v. Goschen*, 17 C. B. 352; 33 L. J. 265. A., the owner of a ship, mortgages it to B., and enters into a contract with C. that C. should work the ship, C. paying all expenses. B. gives notice to C., the ship being at Suez and about to sail for Sydney, that he required the possession of the ship upon its arrival at Sydney. Possession was given to B. at Sydney, but C. did not pay the wages, &c.; and the ship was arrested in a wages-suit, and ultimately B. paid the wages, &c.:—*Held*, that B. was entitled to recover in an action against C. for money paid. *Johnson v. Royal Mail Packet Company*, 3 L. R. C. P. 38; 37 L. J. 33; 17 L. T. 445. A shipwright has only a lien for a fair and reasonable claim for repairs done by him. *Watson v. Pearson*, 18 L. J. 395.

[6] A separate action cannot be maintained against the master and the owner of a ship

SLANDER VERBAL. 6 Abr. 450. See *ante*, Libel.

I. Words spoken of Persons in Particular Employments, Trades, etc.
II. Words spoken Confidentially, and Privileged Statements.
III. Repetition of Slander spoken by others.
IV. Slander of Title.
V. Words actionable only on the ground of special Damage.
VI. Remedies by Action.
(*a*) *Particulars and interrogatories in.*
(*b*) *Pleadings in.*
(*c*) *Damages in.*
(*d*) *Costs.*

I. Words spoken of Persons in Particular Employments, Trades, etc.[1]

II. Words spoken Confidentially, and Privileged Statements.[2]

for the same identical cause of action; nor can he, after he has sued the one to judgment, maintain another action against the other. *Priestley v. Fernie*, 34 L. J. Ex. 173; 13 L. T. N. S. 208. The liability of a shipowner for repairs is a question of contract, not of ownership. New trial directed where a verdict against defendant had been given on the mere evidence that he was a registered owner, and that the captain had ordered the repairs. *Pearson v. Nell*, 13 W. R. 967. See *Great Eastern*, 2 L. R. Ad. 88. A magistrate has jurisdiction to impose the penalty of 100*l.* on every person found on board any ship or boat liable to forfeiture for having on board any of the articles prohibited by statute. He is also to inquire whether the ship or boat was liable to forfeiture. *Wheale v. Brown*, 4 H. & Co. 705; 15 L. T. 228.

[1] To say of a clergyman that he came to the performance of divine service in a towering passion, and his conduct was calculated to make infidels of his congregation, is slander. *Walter v. Brogden*, 19 C. B., 65; 12 L. T. N. S. 495. Defamatory words spoken by a shareholder of a director at a meeting of shareholders convened by the defendant, who invited the public and the press to be present:—*Held*, not to be privileged, but had none but shareholders been present, the words would have been privileged on the ground of interest. *Parsons v. Surgey*, 4 F. & F. 247. Words, imputing to a certificated master mariner drunkenness whilst in command of a vessel at sea, are actionable without special damage. *Irwin v. Brandwood*, 2 H. & C. 960; 33 L. J. Ex. 257. So to accuse a gamekeeper of practices viewed with suspicion in a particular district. *Tayler v. Newcom*, 36 L. J. N. S. 169.

[2] Where words capable of two constructions were alleged to be privileged, one of which is compatible with the absence of malice, then the presumption of the absence of malice which existed in the privilege of the occasion should be allowed to prevail throughout. *Spill v. Maule*, 38 L. J. Exch. 138. A communication, made *bonâ fide*, upon any subject-matter in which the party communicating has an interest, or in reference to which he has, or honestly believes he has, a duty, is privileged, if made to a person having a corresponding interest or duty. *Whiteley v. Adams*, 15 C. B. 392; 33 L. J. C. P. 89. *Cowles v. Potts*, 34 L. J. 247. No action is maintainable against a county court judge for words spoken by him in his judicial capacity while trying a cause, even though the words be spoken falsely and maliciously, without any foundation whatever, and not *bonâ fide* in the discharge of his duty as judge, and though they be wholly irrelevant to the matter in issue before him. *Scott v. Stansfeld*, 37 L. J. R. Exch. 155; 3 L. R. 229; 18 L. T. 572. In giving a character of a servant, although the occasion *primâ facie* justifies the communication of matter which would otherwise be actionable, yet if, at the close of the plaintiff's case, there is any evidence which would warrant the jury in inferring actual or express malice, it cannot be withdrawn. *Jackson v. Hopperton*, 16 C. B. 829; 10 L. T. N. S. 529. But not expressions clearly in excess of the occasion. *Fryer v. Kinnersley*, 15 C. B. 422; 33 L. J. C. P. 96. A., suspecting B. of stealing meat from his shop, accused her of having done so (no one being by at the time). B. thereupon applied to a police magistrate for a summons against A. A., meeting a third person, who was in the shop at the time the supposed larceny was committed, told him that proceedings had been taken against him, and said to him, "You were in the shop: did not you see her take it?"—*Held*, a privileged communication. *Force v. Warren*, 15 C. B. N. S. 806.

III. Repetition of Slander spoken by others.[1]

IV. Slander of Title.[2]

V. Words actionable only on the ground of Special Damage.[3]

VI. Remedies by Action.

(*a*) *Particulars and interrogatories in.*[4]

(*b*) *Pleadings in.*[5] (*c*) *Damages in.*[6] (*d*) *Costs.*[7]

SLAUGHTER-House. 5 Abr. 51. *See* Public Health.

SLAVE and Slavery.[8] 6 Abr. 468.

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[1] Where slanderous words are not actionable *per se*, no action will lie against the original utterer of the slander for damage resulting from a repetition of it unauthorised by him. *Parkins v. Scott*, 1 H. & C. 153; 31 L. J. Exch. 331. Therefore, where a defendant imputed adultery to the plaintiff's wife in his absence, and she voluntarily repeated the slander to her husband, whereby he refused to cohabit with her:—*Held*, that no action was maintainable against the defendant. *Ib.* When a person repeats a slander, *upon an occasion not privileged*, stating it as a report which he has heard, it is actionable, and the law implies malice. *Watkin v. Hall*, 3 L. R. 125; 16 W. R. 857.

[2] Slander of title applies not only to cases where the false and malicious assertion relates to real property, but where it relates to personal chattels. *Wren v. Weild*, 38 L. J. Q. B. 327. See cases, 6 Abr. 467.

[3] Words imputing to a woman want of chastity are not actionable, unless attended by the loss of some material temporal advantage. *Roberts v. Roberts*, 5 B. & S. 384; 33 L. J. Q. B. 249; 10 L. T. N. S. 602. And where an action was brought by husband and wife for slanderous words that were alleged to have deprived the wife of the consortion of her husband, it must appear that the conduct of the husband was a natural and reasonable consequence of the slander. *Allsopp v. Allsopp*, 5 H. & N. 534. See *Lynch v. Knight*, 9 H. L. Ca. 577; *Vicars v. Wilcox*, 8 East. 1.

[4] A particular statement of the occasions on which words were uttered may be an action of slander. *Slator v. Slator*, 8 L. T. N. S. 856.—Ir. Interrogatories will not be allowed to be administered to a defendant in an action of slander, except under peculiar circumstances. *Stern v. Sevastopulo*, 32 L. J. C. P. 268; 8 L. T. N. S. 538. Where it is clear that the defendant has made a definite charge against the character of plaintiff, but he is unable to ascertain the exact words, the court will allow interrogatories to that point. *Atkinson v. Fosbroke*, 1 L. R. Q. B. 628; 35 L. J. 182.

[5] The effect of s. 51, 15 & 16 Vic. s. 76, is, that if the words set out in the declaration are actionable, plaintiff may recover, although the precise meaning ascribed to them by the inuendo be proved or not. *Watkin v. Hall*, 3 L. R. Q. B. 396; 37 L. J. 125; 18 L. T. 61.

[6] 60*l.* damages in an action of slander, where in consequence of the speaking of the words, the plaintiff lost an employment worth 50*l.* a-year, besides board, &c., is not excessive. *Jackson v. Hopperton*, 16 C. B. N. S. 829. The special damage to support an action, when the words spoken are not actionable in themselves, must be the loss of some material temporal advantage. *Roberts v. Roberts*, 33 L. J. Q. B. 249. A new trial on the ground that the damages were very inadequate will not be granted where it does not appear that there had been any misconduct or mistake on the part of the jury, or was necessary in order to vindicate the plaintiff's character. *Forsdike v. Stone*, 37 L. J. C. P. 301.

[7] Sec. 5, 30 & 31 Vic. c. 142, as to a judge certifying where plaintiff recovers less than 10*l.* is general in its application, and extends to actions of slander, though such an action cannot be brought in a county court. *Sampson v. Mackay*, 38 L. J. Q. B. 245. *Craven v. Smith*, *ib.* Exch. 90. A certificate under the 3 & 4 Vic. c. 24, s. 2, that a slander is wilful and malicious, is given too late to be "immediately" after the verdict within that statute, if it be given after an interval of ten days from the trial and at another assize town, and there be no circumstances to account for such delay. *Forsdike v. Stone*, 37 L. J. C. P. 301. Where a declaration contains a count for slander and other counts (trespass and assault), and on a plea of not guilty, a general verdict is found for plaintiff with forty shillings damages, the damages are to be apportioned between all the counts. *Burton v. Lowe*, C. P.; 16 L. T. 385. See *Frean v. Sargent*, 32 L. J. Exch. 281

[8] The governor of a colony is the person to whom the general management of the colony is intrusted, and therefore is the person entitled to the bounties which are payable in respect of a seizure of slaves, even though he is absent from the colony at the time when the seizure is made. *Anon.*, 9 Jur. N. S. 1254; 32 L. J. Adm. 189.

SMOKE Nuisance. 6 Abr. 468. *Ante*, Public Health.

SMUGGLING.[1]

SPECIAL Case.[2] 6 Abr. 470.

SPECIFIC Performance.[3]

SPECIFICATION of Patent. *See ante*, Patent.

SPIRITUOUS Liquors.[4]

STAKEHOLDER.[5] 6 Abr. 47. *See* Gaming ; Horses; Wager.

STAMPS.[6] 6 Abr. 476. *See ante*, Bills and Bonds.

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[1] The interpretation of the word importer, in the 8th section, 22 & 23 Vic. c. 37, is not to be applied to the phrase, cause to be imported, in the 6th section; but that these latter words are only applicable to a person who has ordered the goods, or otherwise, in fact, caused them to be imported. *Budenburgh v. Roberts*, 1 L. R. C. P. 575; 35 L. J. M. C. 235. The condemnation of the ship or boat by a court of competent jurisdiction is not a necessary precedent condition to the conviction of a person charged on information before a magistrate with having been found or discovered to have been on board a ship or boat within a port of the United Kingdom contrary to s. 28 of the 18 & 19 Vic. c. 96. *Weale v. Brown*, 15 L. T. N. S. 228.—Exch.

[2] By R. H. T. 1863, each paragraph in a special case must be numbered. Where upon a special case it is provided that the court might draw any reasonable inferences of facts, the court will not go to the extent of inferring that the facts stated are merely colourable, and that the real transaction was a different one, but it may draw any inference fairly arising as to other facts not stated. *Bullen v. Sharp*, Ex. 1 L. R. C. P. 86; 35 L. J. 105. Mere hypothetical questions will not be allowed to be discussed. *Nixon v. Albert Insurance*, 2 L. R. 338; 36 L. J. Ex. 186, nor founded on an unstamped document, though objection offered to be waived. Upon an appeal by special case from the decision of the Commissioners of Inland Revenue the appellant begins, and only one counsel on each side will be heard. *Re Lord Eglinton*, 13 W. R. 902. Court under 19 s., 23 & 24 Vic. c. 126, may, where there are several, give judgment for one only. *Brenner v. Hall*, 35 L. J. C. P. 332. The special case referred to in 17 & 18 Vic. c. 125, s. 32, does not include a special case stated by an arbitrator for the opinion of the court under s. 5; and error does not lie from a judgment on such a special case. *Gumm v. Fowler*, Q. B.; 2 Ell. & Ell. 890. By consent a special case may be amended when brought on for argument. *Forsbrooke v. Forsbrooke*, 3 L. R. 3 Ch. App. 93.

[3] 21 & 22 Vic. c. 27, s. 2, does not empower the court, after a decree for specific performance has been made, to add to the decree an order to assess damages in consequence of subsequent facts. *Corporation of Hythe v. East*, 1 L. R. Eq. 620; 35 L. J. 257.—C. Where a decree for specific performance had been made against a purchaser who subsequently became bankrupt, and his assignee declined the contract, the court made an order staying all further proceedings in the suit, without prejudice to any application which plaintiff might be advised to make to the Court of Bankruptcy under 12 & 13 Vic. c. 106, s. 146. *Kell v. Nokes*, 35 L. J. 729.

[4] The 24 Geo. 2, c. 40, s. 12, which prohibits the recovery of any demand for or on account of spirituous liquors, unless such demand shall have been really and *bonâ fide* contracted at one time to the amount of twenty shillings or upwards. This is repealed by the 25 & 26 Vic. c. 38, as to liquors to be consumed other than on the premises where sold and delivered at the residence of a purchaser in quantities less than a quart. Before the act was so far repealed, it was held to apply to liquors sold in small quantities to retail them again. *Hughes v. Done*, 1 Q. B. 294

[5] An award by a referee as to a race can have no effect unless a start actually takes place. *Sadler v. Grant*, 3 L. J. N. 21. A stakeholder may pay money into court under the Trustee Relief Act. *United Kingdom Assurance, in re*, 34 L. J. Ch. 554; 12 L. T. N. S. 441.—R. A solicitor was employed for the vendor of real estate. By the conditions of sale the deposit was to be paid into his hands "as agent for the vendor," and he signed the contract of sale and receipt for the deposit as such agent:—*Held*, that he was not a stakeholder, and was liable to pay over the deposit to the vendor and in default to pay interest from the time of demand. *Edgell v. Day*, 1 H. & R. 8; 35 L. J. C. P. 7. Plea in the words of 8 & 9 Vic. c. 109, s. 19, by a stakeholder to an action by the winner of a wager, for money had and received to his use, with an averment that the plaintiff did not repudiate the said wager or demand back his money before the event of the said wager:—*Held*, a good defence. *Savage v. Madder*, 36 L. J. Ex. 178; 16 L. T. 600.

[6] A contingent debt is included in the

STAMP Duties, Acts relating to, 5 & 6 Vic. c. 79; 6 & 7 *ib.* c. 72; 13 & 14 *ib.* c. 97; 16 & 17 *ib.* cc. 59, 63; 18 & 19 *ib.* c. 78; 19 & 20 *ib.* c. 81; 22 & 23 *ib.* c. 36; 23 & 24 *ib.* cc. 5, 15, 111; 24 & 25 *ib.* c. 92; 25 & 26 *ib.* c. 22; 28 & 29 *ib.* c. 96.

Duties on Insurances. Fire, 28 & 29 Vic. c. 30; repealed, 32 & 33 *ib.* c. 14; sea, 30 & 31 *ib.* c. 23; life, 16 & 17 *ib.* c. 39; 23 & 24 *ib.* c. 111; accidental death, 28 & 29 *ib.* c. 96.

Duties on Appraisers' Licenses. 8 & 9 Vic. c. 76.

Attorneys' Articles. 19 & 20 Vic. c. 81.

Excise Licenses, 32 & 33 Vic. c. 14.

Allowance on Purchase of. 12 Vic. c. 80.

on Drafts. 21 Vic. c. 20.

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words "other debt," in the 10th s. 16 & 17 Vic. c. 59. *Mortimore v. Inland Revenue*, 2 H. & C. 838 and 33 L. J. Ex. 262. By 13 & 14 Vic. c. 97, the same duty as on an original mortgage is imposed on the transfer of a mortgage which does not exceed 1400*l.*, and upon a transfer above 1400*l.* a fixed duty of 1*l.* 15*s.* By 24 & 25 Vic. c. 91, s. 30, where there are several deeds upon the transfer of a mortgage to trustees, if one of the deeds be stamped with the duty of 1*l.* 15*s.* it is sufficient that the others are stamped with the duty on a counterpart, viz. 5*s.* The 28 & 29 Vic. c. 96, s. 17, after reciting that certain duties on the transfers of mortgages were imposed by 13 & 14 Vic. c. 97, enacts that in lieu thereof the duty of 6*d.* shall be payable on every 100*l.* or fractional part of 100*l.* transferred:—*Held*, that 24 & 25 Vic. c. 91, s. 30, was not repealed by 28 & 29 Vic. 96, s. 17. *Foley (Lord) v. Inland Revenue*, 3 L. R. Exch. 263; 37 L. J. Exch. 109. Two stamp duties are chargeable upon the instrument having two distinct operations, one as a lease, and the other as a conveyance on a sale. *Brightman v. Commissioners of Inland Revenue*, 18 L. T. N. S. 412.—Exch. A marriage settlement is chargeable with *ad valorem* duty in respect of Brazilian bonds, New Brunswick bonds, Nova Scotia bonds, scrip Peruvian Loan, Chilian bonds, Mexican Remanet bonds, and Indian 5*l.* per cents, created by 22 & 23 Vic. c. 139, after the 13 & 14 Vic. c. 97 passed. *Alsager, in re*, 2 H. & C. 969; 10 L. T. 238; 33 L. J. Exch. 161. See 27 & 28 Vic. c. 18, ss. 11, 12, 13. The stamp upon a lease for forty-five years, at a yearly rent of 3500*l.* for the first twenty-three years and a peppercorn for the residue, is to be assessed at the rate specified by 13 & 14 Vic. c. 97, as applicable to a lease at a yearly rental exceeding 100*l.* *Pearson v. Commissioners of Inland Revenue*, 37 L. J. Exch. 171. In *May v. May*, 33 Bevan, 31, a question was raised whether the practice of allowing a copy of a lost instrument to be stamped that it might be given in evidence, is altered since the 13 & 14 Vic. c. 97, s. 12. The words "mortgage, debtor, or sum of money," in 16 & 17 Vic. c. 59, s. 10, include contingent as well as absolute debts. *Mortimore v. Commissioners Inland Revenue, supra.* 21 & 22 Vic. c. 76, dispenses with the necessity of the notarial instrument of seisin; is only liable to a stamp duty of a shilling, as a notarial act. *Lord Eglinton's Trustees*, 13 W. R. 902. The consideration for the transfer of the whole undertaking of one railway company to another consisted of the purchasing company taking on themselves the liabilities of the vendors, and creating and allotting to the shareholders of the selling company preference stock of the purchasing company:—*Held*, preference stock within the 13 & 14 Vic. c. 97, and liable to pay duty on its market value. *Furness Railway v. Commissioners of Inland Revenue*, 33 L. J. Exch. 173; 10 L. T. N. S. 161. See *Ulverstone Railway Company v. Inland Revenue*, 3 H. & C. 855. It is not competent to a judge at *nisi prius*, under s. 21 of the 17 & 18 Vic. c. 125, to reserve a question as to the admissibility of a document on a stamp objection, unless he decides against its admissibility. *Cory v. Davis*, 14 C. B. N. S. 370. By s. 52 of the 55 Geo. 3, c. 184, affidavits required by that or any former or future act to be made for the satisfaction of the Commissioners of Stamps, "shall in all cases not otherwise expressly provided for" be made before such commissioners or certain other specified persons, of whom a justice of the peace is not one. By s. 7 of 9 Geo. 4, c. 23, "any justice of the peace is empowered to administer" the oath to the "cashier, accountant, or chief clerk" of a bank, for certain affidavits required by the Commissioners of Stamps:—*Held*, that the power in the latter act is cumulative and additional, not exclusive, and that the authority to administer the oath given by the earlier act is not taken away by the later act. *R. v. Greenland*, 37 L. J. M. C. 37.

STAMPS, Fees payable by, in the Superior Courts. 28 & 29 Vic. c. 45; and in Public Departments, 29 & 30 Vic. c. 76; 32 & 33 *ib.* c. 49; in Bankruptcy, documents exempt from, 32 & 33 *ib.* c. 77, s. 113.

STANNARY. 6 Abr. 482; 4 & 5 Wm. 4, c. 42; 6 & 7 *ib.* c. 106; 32 & 33 Vic. c. 19.

STATUTE. 6 Abr. 482. *See* also particular heads as to the subject-matter; as Frauds, Statute of; Limitations, Statute of.

I. Time of Operation: Prospective or Retrospective.

II. To Whom, and Where they Extend.

III. Construction of.

IV. Repealing, Continuing, and Reviving.

V. Titles and Marginal Notes.

VI. Enforcing Obedience to.

I. Time of Operation: Prospective or Retrospective.[1]

II. To Whom, and where they Extend.[2]

III. Construction of.[3]

IV. Repealing, Continuing, and Reviving.[4]

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[1] An act is not to be construed as retrospective by inference, but only by express enactment. *Evans v. Williams*, 2 Drew. & Sm. 324. The general presumption that a statute is not intended to have a retrospective operation, may give way to a contrary inference, from the remedial nature of the enactment. *The Ironsides*, 1 Lush. 458. Where a company, by a subsequent private Act, procured the insertion of a clause extending the period of ten years allowed for the sale of superfluous lands to fifteen years:—*Held*, not to affect the rights of an adjoining owner accrued to him by reason of the previous expiration of the ten years. *Moody v. Corbett*, Q. B. 34 L. J. 166. See *Galloway v. London (Mayor of)*, 12 L. T. 319. Where at the end of an act it is enacted that it shall come into operation at a future day named; no part can have any operation until the time named, although the language may refer to proceedings commenced after the "passing." *Wood v. Riley*, 3 L. R. C. P. 26; 37 L. J. 24; 17 L. T. 216. Section 10, 30 & 31 Vic. c. 142, as to actions of tort brought in a superior court by a party having no visible means of paying costs is retrospective, and applies to an action commenced before the passing of the act. *Kimbray v. Draper*, 37 L. J. Q. B. 80; 18 L. J. 540. *Restall v. London & South Western Railway Company*, 3 L. R. Ex. 141; 37 L. J. *ib.* 89.

[2] Where a foreign statute of limitations prescribes a shorter time than the English statute, but does not affect causes of action, but only the remedy, the local statute is no bar here to an action within the period allowed by the English law. *Harris v. Quine*, 33 L. J. Q. B. 331.

[3] Where special powers are conferred by Parliament for effecting a particular purpose, they cannot be exercised for any purpose of a collateral kind. *Galloway v. London (Mayor of)*, 1 L. R. H. L. 34; 35 L. J. Ch. 477; 14 L. T. N. S. 865. The presumption is, that in Acts passed since a Consolidation Act, the legislature intends to follow it. Except where, by express language or necessary intendment, it appears that the legislature intended to depart from them. *Reg. v. London (Mayor of)*, 2 L. R. 2 Q. B. 292. An agreement not inconsistent with public interest or morality may be made in derogation of a private Act of Parliament. *Savin v. Hoylake Railway Company*, 1 L. R. Ex. 9. An act is to be construed as only directory where there are no negative words. *Reg. v. Leicester*, 7 B. & C. 12. *Reg. v. Birmingham*, 8 *ib.* 29. *Reg. v. Mayor of Rochester*, 27 L. J. M. C. 45; 29 *ib.* Q. B. 23. Where two statutes give authority to public bodies to exercise powers which cannot consistently with the object of the legislature co-exist, the earlier must necessarily be repealed by the later statute. *Daw, Clerk of Commissioners of Sewers v. The Metropolitan Board of Works*, 12 C. B. N. S. 161. As to affirmative statutes inconsistent with each other, see *O'Flaherty v. McDowell*, 6 H. L. Ca. 142. As to a leasing power conferred by private act, see *Shrewsbury case*, 36 L. J. 17, 19 C. B. 606. When cumulative, see *Parry v. Croydon Commercial Gas and Coke Company*, 10 Jur. N. S. 172.—Ex. Ch.

[4] A clause in a private act quite inconsistent with a clause in a subsequent public act dealing with the same subject is thereby

V. Titles, and Marginal Notes.[1]

VI. Enforcing Obedience to.[2]

STAYING and Setting Aside Proceedings.[3] 6 Abr. 491.

STOCK.[4] 6 Abr. 500. As to the conversion of Stock into certificates, *see* 26 Vic. c. 28; to facilitate the payment of Dividends, *see* 32 & 33 Vic. c 104.

repealed. *Great Central Gas Consumers' Company v. Clarke*, 13 C. B. N. S. 838; 32 L. J. C. P. 41—Ex. Ch. See 3 L. R. C. P. 416; 37 L. J. *ib.* 163. So, when a statute prohibits a particular act, and imposes a penalty for doing it, and a subsequent statute imposes a different penalty for the same offence. *Robinson v. Emerson*, 4 H. & C. 352, 355; 14 L. T. N. S. 391. Mere non-user is not sufficient to repeal a statute, but the fact of non-user may be important in considering the question whether or not the statute has been repealed by implication. *The India*, 33 L. J. Adm. 193; 12 L. T. N. S. 316. A general enactment in a later statute does not repeal a particular enactment in an earlier statute, unless the intention to do so is manifest, or the implication is irresistible. *Cons. R. Thames v. Hall*, 3 L. R. C. P. 415; 37 L. J C. P. 163.

[1] The title of a statute is no part of the law. *Reg. v. Williams*, 1 W. Bl. 95. The marginal note printed by the Queen's printer, forms no part of the statute itself, and is not binding. *Claydon v. Green*, 3 L. R. C. P. 511; 37 L. J. C. P. 226.

[2] Where a right is given by statute, and a penalty enforceable thereunder in respect of every interference with the right, a court of equity will restrain the interference with the right, and not leave the plaintiff to enforce the penalty. *Letton v. Gooden*, 2 L. R. Eq. 123; 35 L. J. 427. An agreement not inconsistent with public interest or morality may be made in derogation of a private Act of Parliament. *Savin v. Hoylake Railway Company*, 1 L. R. Ex. 9. Where a new right has been created by statute, the proper mode of enforcing it is by mandamus at common law. *Simpson v. Scottish, &c., Insurance Company*, 32 L. J. Ch. 329; 1 Hem. & M. 618.

[3] The plaintiff's counsel, elected in the course of his reply to be nonsuited. The plaintiff then commenced a second action, and delivered the declaration on the 13th January, for the same cause of action, defendant took out a summons on the 24th January to stay the second action till the costs of the first were paid, no order was made on the summons, and he then applied to the court to stay the second action till the costs of the first were paid. The plaintiff was an uncertificated bankrupt. Court stayed the second action till the costs were paid. *Prowse v. Loxdale*, 32 L. J. Q. B. 227; 8 L. T. N. S. 314; 3 B. & S. 896. An action having been brought by an assignee under a bill of sale, while a rule to enter a nonsuit was pending, he brought another action for the same goods, but founded on a title which had subsequently arisen, and the defendant not agreeing to a *stet processus*, the Court allowed both actions to proceed. *Marshall v. Goadby*, 11 W. R. 365—Q. B. By the 4th section of the London and Chatham Railway Company's Arrangement Act, "no actions, executions, or other proceedings" against the company, or "affecting the property thereof," were to be continued or commenced during a certain period without leave:—*Held*, that the taxation of costs in an action commenced, and is terminated before the passing of the act, was a "proceeding" which was stayed by this section. *Reg. v. London, Chatham, and Dover Railway Company*, L. R. 3 Q. B. 170; 37 L. J. 75. An action was stayed upon the terms that the defendant should insure and keep insured a certain ship. The ship was insured, and on the expiration of the policy slips for other policies were signed, but the policies were not effected until three days after the expiration of the former policy. The plaintiff signed judgment:—*Held*, that the slips were not a binding legal insurance, and he was entitled to retain his judgment. *Parry v. Gt. S. Comp.*, 12 W. R. 78; 9 L. T. N. S. 379—Q.B. *Skinner v. Tyson*, 18 L. T. 551. Where, in an action upon an agreement, a plaintiff obtained a verdict, and a rule was afterwards made absolute to enter a verdict for the defendant, the court, under special circumstances, allowed the rule to be amended by directing a nonsuit to be entered, but only upon the terms of the plaintiff paying the costs of the former action, and of the rule. *Sillen v. Holloway*, 14 C. B. N. S. 336. Proceedings in the Mayor's Court will be stayed whilst an action is pending in a superior court relating to the same matter unless the plaintiff will abandon his proceedings in the Mayor's Court. *Frith v. Guppy*, 36 L. J. C. P. 45. The court will set aside a judgment on merits, and will treat a plea of infancy as a defence upon the legal merits. *Cavallier v. Michael*, 17 L. T. N. S. 290. Where execution has been issued prematurely, a judge may set the same aside with costs, and impose the terms that no action be brought, and the court will not afterwards review the exercise of such discretionary power. *Bartlett v. Stinton*, 25 L. J. C. P. 238. See *Hayward v. Duff*, 12 C. B. 364. *Wilcox v. Odden*, 15 *ib.* 837.

[4] Time bargains for the sale of stock of

STOCK-Exchange, Stock-Broker and Jobber.[1] 6 Abr. 502. *See* Digby on the Sale and Transfer of Shares.

STOLEN Property.[2]

which the seller was not possessed at the time, though not illegal at common law, was made so by 7 Geo. 2, c. 8. That act is now repealed by 23 Vic. c. 28. See *Grizwood v. Blane*, 11 C. B. 538. *Knight v. Fitch*, 24 L. J. C. P. 122.

[1] Lord Cairns states, in *Coles v. Bristow*, the exact contract or liability of a jobber on the Stock Exchange, who has purchased shares for the next approaching settling day, to be that on that day he will either take the shares himself, and be bound himself to accept and register a transfer and to indemnify the vendor, or to give the names of one or more transferees, to whom no reasonable objection exists, and who will accept and pay for the shares. And if he takes the latter course, and the names are accepted by the vendor, and transfers executed to them, and the transfers are taken and paid for by those transferees or their brokers, the liability to register the shares and indemnify the vendor is shifted to those transferees, and the jobber is relieved from all further liability. But the liability of the jobbers continues entire and unbroken until there is an acceptance of the purchasers by the vendor, and an acceptance of the transfers by the purchasers or their brokers; and they are not discharged therefrom by merely paying the agreed price, and giving a name as that of the purchaser, if that name should be objectionable, or the person named refuses to accept the shares. *Coles v. Bristow*, 19 L. T. N. S. 403; 4 L. R. Ch. 3; 38 L. J. Ch. 81; 38 L. J. C. P. 10; distinguished *Maxsted v. Payne*, 38 *ib.* Ex. 48; 2nd action, *ib.* Ex. 129. The Chief Justice observed that the intervention of jobbers in these transactions is obviously for the advantage both of sellers and buyers, who are thus brought readily into contact. All that the seller desires is to find a customer who will pay the price, accept the shares, and relieve him from all further liability in respect of them. If a buyer is found as to whom the seller's broker is satisfied, the seller has all that he has sought for. In practice, no seller employing a broker to sell stock or shares for him thinks of limiting the authority of the broker to selling exclusively to a jobber. He is satisfied with the buyer whom the broker finds for him, and for the obvious reason that he has it in his own power, by reasonable diligence on the part of himself or his broker, to protect himself against loss. He need not part with his shares till the price is paid and the instrument of transfer is executed by the buyer. He may insist on the registration of the shares being made in the name of the new buyer as part of the transaction. On the other hand, it would certainly be a considerable hardship on the jobber if, for the small profit realised on the re-sale of stocks or shares, he were to be held responsible in respect of any non-fulfilment of any part of the contract when the matter has passed out of his hands by the seller assenting to complete the transaction with the substituted buyer, or of loss occasioned, as in the present instance, by the *laches* of the seller in parting with the shares without insisting on the execution of the transfers by the party to whom he transfers them. Far, therefore, from being unreasonable, the usage appears to us to be fair and equitable with reference to the interests of all parties concerned. *See Hawkins v. Maltby*, 3 L. R. Ch. 188; 17 L. T. 397. Stock-jobbers, members of the Stock Exchange, are not liable to indemnify the vendor of shares against calls, after they have transferred the shares and given the name of a proper transferee who has accepted the transfer, and paid the price. So held by the Ex. Ch. overruling the decision below. 37 L. J. C. P. 89. *Grissell v. Bristowe*, Ex. Ch. 38 *ib.* 10; 4 L. R. 36; 19 L. T. 390. Plaintiff sold on the Stock Exchange twenty shares in a joint-stock company to P. for the account day. Defendant on a different day, and at a different price, but for the same account day as that for which plaintiff had sold, bought of P. in like manner on the Stock Exchange twenty shares in the same company. Before the account day defendant gave the name of C. as transferee of the shares he had bought, and a deed of transfer of the shares of plaintiff to C. was duly made under seal, and executed by both plaintiff and C., and the purchase-money paid to plaintiff. The company being shortly afterwards in a course of winding up, and the liquidators refusing to register the transfer of plaintiff's shares, he was put on the list of contributories in respect of such shares, and had to pay a call on them:—*Held*, that the plaintiff was not entitled to be indemnified by defendant against such call. *Torrington v. Lowe*, 38 L. J. C. P. 121. See *Davis v. Haycock*, 38 L. J. Ex. 155. *Biedman v. Stone*, 36 L. J. C. P. 198. *Chapman v. Shepherd*, *ib.* 113. There is no custom of the Stock Exchange which enables a lender of money for a specified time, on the security of shares which are transferred into his name, to sell those shares during the currency of the loan; and if he do so and make a profit, the borrower redeeming the shares is entitled to the profit. *Langton v. Waite*, 6 L. R. Eq. 165; 37 L. J. 345.

[2] Sec. 44 2 & 3 Vic. c. 71, must be read with sec. 66, 2 & 3 *ib.* 47, and so construed it applies only to street offences, and not to property in a house, which is suspected to have been stolen. *Hadley v. Perks*, 1 L. R. Q. B. 444; 35 L. J. M. C. 177.

STOP-Order. *See* 5 Abr p. 260, Judgment.

STOPPAGE in Transitu.[1] 6 Abr. 564.

SUBSTITUTED Contract.[2]

SUCCESSION Duty.[3] 6 Abr. 507.

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[1] The law of stoppage *in transitu* is not altered by the Bills of Lading Act, 18 & 19 Vic. c. 111. *Kemp v. Canavan*, 15 Ir. Co. L. R. 216. It does not rescind the contract between vendor and vendee, but gives the vendor a lien upon the goods for the unpaid purchase-money. *Scotsman v. Lancashire R. Co.* 2 L. R. Ch. Ap. 332. A., at the direction of B. to purchase goods of a certain kind, orders goods on his own credit from C., his own foreign agent. C. indorses the bill of lading to A., and A. indorses it to B.:—A. has to B. the relation of vendor and vendee, and possesses the right to stop *in transitu*. *The Tigris*, 32 L. J. Adm. 97; 8 L. T. N. S. 117. The transitus of goods is not ended by delivery on board a ship chartered by the vendee. *Berndtson v. Strang*, 37 L. J. Ch. 665; 3 L. R. 588; 19 L. T. N. S. 40. The right extends only over the goods themselves and the net proceeds, and not over the policy-monies paid in respect of insurances effected by the vendee. *Ib.* A bill of lading by which the goods are made deliverable to "order and assigns" is a negotiable instrument, and by indorsement and delivery the property in the goods passes to the indorsee, subject only to the right of an unpaid vendor to stop *in transitu;* and if the indorsee indorse the bill of lading to a purchaser for value and without notice of any fraud, the vendor's right of stoppage *in transitu* is gone. *Gurney v. Behrend*, 3 E. & B. 634. *Pease v. Gloahec*. 1 L. R. P. C. 219; 35 L. J. 66. A. sold to B. goods which were lying at X., one of the defendants' railway stations; a portion were by B.'s orders sent to Y., another of the defendants' stations, were there taken by him and were paid for; B. refused to take any more, but A. sent the remainder to Y. to be delivered to him; B. refused to take them, and they were sent back to X.; A. also refused to take them, and they were again sent to Y., where they remained till B. became bankrupt; A. then directed the defendants to keep them for him, and they did so:—*Held*, that the transit was not complete, and that A.'s right of stoppage *in transitu* remained. *Bolton v. the Lancashire and Yorkshire R. Co.* 35 L. J. C. P. 137.

[2] Without clear evidence of the adoption of a substituted contract by a vendee it will not be implied. *Holmes v. Morris*, 9 L. T. Ex. 393.

[3] The value of property for the purposes of the succession-duty is to be ascertained at the time when the interest of the successor accrues. If the property has then no saleable value, nor any actual or potential annual value, it is not capable of being assessed. Neither possible increase nor diminution in the value of the property after the succession accrued is dealt with by the act. *Attorney-General v. Sefton* (*Earl*), 11 H. L. Cas. 257; 12 L. T. N. S. 242: 2 H. & C. 362. A successor under a devise of real estate is not entitled to deduct from the annual value of the land as necessary outgoings, salaries paid to agents, or per centage on receipt of rents. And the estate being vested in trustees for the purpose of keeping down interest, will make no difference in annuities, &c. *In re Elwes*, 3 H. & W. 719. *In re Earl Cowley*, 1 L. R. Ex. 288; 35 L. J. Ex. 179. Duty is not payable upon pure personalty locally situate in England, and passing under the will of a testator domiciled abroad. *Wallace v. Attorney-General;* ——— *v. Shadwell*, 13 L. T. N. S. 480. But such property may be subject to succession-duty, although exempt from legacy-duty by reason of the testator having a foreign domicil. *Capdevielle, In re*, 3 H. & C. 985; 33 L. J. Ex. 306. Appointees taking upon the death of the appointer are successors to him. *Chapman, In re*, 13 L. T. N. S. 144. *Atty.-Gen. v. Upton*, 1 L. R. Exch. 224; 35 L. J. Ex. 138; 14 L. T. N. S. 334. A tenant in tail, liable to a duty on his succession, barred the entail and acquired the fee simple by his own act, and died before the instalments of duty payable on his succession became due—*Held*, the instalments were a continuing charge. *Atty.-Gen. v. Lilford* (*Lord*). 3 H. & C. 239; 34 L. J. Ex. 44. A testator, who died before the 19th May, 1853 (the day on which the Succession Duty Act, 16 & 17 Vic. c. 51, came into operation), devised a reversion, in respect of which he would not have been liable to succession-duty, if it had vested in possession in his lifetime after that date:—*Held*, that he created a new succession which was not exempt from duty under the 15th section. *Atty.-Gen. v. Gardener*, 1 H. & C. 639; 32 L. J. Ex. 84; 7 L. T. N. S. 682. A. devised his real estate to his wife for life with remainder in fee to R., a stranger in blood. R. died intestate before the 16 & 17 Vic. c. 51. The testator's wife died after the commencement of that act, when the defendant, heir-at-law of R., became beneficially entitled in possession to the property so devised:—*Held*, that the property vested in the defendant by a "a derivative title" under the will, within the 15th section be chargeable with 10*l.* per cent duty. *Atty.-Gen. v. Rushton*, 2 H. & C. 812; 33 L. J. Exch. 184; 9 L. T. N. S. 832. A pur-

SUICIDE.[1] 6 Abr. 508.

SUNDAY. 6 Abr. 508; see *ante*, Inns, p. 246.

I. When included in the Computation of Time.[2]

II. Legal Proceedings.[3]

III. Contracts and Trading on.[4]

IV. As to Public Places.[5]

SUPPORT to Buildings and Land. *See* Easement.

SURETY. *See* Principal and Surety.

SUPERSTITIOUS Use.[6]

SURRENDER.[7]

SWEARING. *See* Affidavit, 1 Abr. p. 240; Affirmation, *ante*, p. 13, *post*, Witness.

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chaser is not entitled to any particular form of certificate from the Inland Revenue to show that the property is free from succession-duty. *Earl How v. Earl Lichfield*, 1 L. R. Eq. 641.

[1] The law of *felo de se* does not apply to a Hindu or Mahomedan native committing suicide in India. *Advocate-Gen. v. Rance*, 12 W. R. 21—C. P. An attempt to commit suicide is not an attempt to commit murder within the 24 & 25 Vic. c. 100, but remains a misdemeanor at common law, triable by the court of quarter sessions. *Reg. v. Burgess*, 1 L. & C., C. C. 258; 9 Cox, C. C. 247.

[2] By 18 & 19 Vic. c. 121, s. 40, appeals to the quarter sessions under the act are not to be heard, unless the appellant, within fourteen days after the making of the order appealed against, gives written notice, and within two days of giving such notice, enters into a recognizance to try the appeal:—*Held*, that Sunday is not to be excluded from the computation of the two days. *Simpkin, Ex parte*, 2 El. & El. 392. But Sunday is to be computed in the three days allowed for an application by parties to state a case, although it is the last day. *Wynne v. Ronaldson*, 12 L. J. 711.

[3] A person was arrested under a warrant, brought before a magistrate and required to give sureties for good behaviour, or be imprisoned. He refused, and was committed to prison till he should find the sureties:—*Held*, that although the arrest might be good, the taking sureties and committal was a judicial act, and therefore void as being done on Sunday. *Reg. v. Ramsay*, 16 W. R. 191—Ir. And where the last day falls on a Sunday or holiday, and the act is to be done by the court, and not by the party, *ex. gr.* the sealing of a writ, it may be done on the next practicable day. *Hughes v. Griffiths*, 13 C. B. N. S. 324; 32 L. J. C. P. 47.

[4] A farmer is not within 29 Car. 2, c 7, s. 1, even though he work with his own hands. *Reg. v. Silvester*, 33 L. J. M. C. 79. *Reg. v. Cleworth*, 9 L. T. 682—Q. B.; 4 B. & S. 927. Whether haymaking is a work of necessity, is a question of fact on which the finding of the justices must be taken as conclusive. *Ib.* And it seems that the term labourer extends to an agricultural labourer. *Ib.* A local act for a parish, in which was a large cattle market, enacted, that it shall not be lawful for any drover or other person to conduct or drive through any of the streets any oxen during Sunday. A person driving a van with horses, in which were calves being conveyed to the market, is not driving or conducting cattle within the statute. *Triggs v. Lester*, 1 L. R. Q. B. 259; 13 L. T. N. S. 701.

[5] A building duly registered for religious worship under the 18 & 19 Vic. c. 81, s. 2, may be opened on Sunday evenings for the performance of sacred music and public addresses of an instructive character and containing nothing hostile to religion. A charge for admission (the proceeds being applied to the necessary expenses) would not affect the legality of the meeting. *Re St. Martin's Hall*, M. T. C. P. 1869.

[6] If a charitable bequest be void by the express enactment of a statute, the bequest cannot be carried out *cy-pres*. But if the bequest be void, as being contrary to the policy of the law, the bequest will in general be carried out *cy-pres*. *Sims v. Quinlan*, 16 Ir. Ch. R. 191.

[7] The effect of the 6th section of 4 Geo. 2, c. 28, while it gives a lessee the right to surrender notwithstanding his contracts with his under-lessee, leaves untouched the sub-interest. *Cousins v. Phillips*, 35 L. J. Ex. 84.

T.

TAXATION of Costs.[1] 3 Abr. 310, see *ante*, Costs, p. 143.

TAXES.[2] 6 Abr. 514. *See* Succession Duty, and 16 & 17 Vic. c. 90; 32 & 33 *ib.* c. 14.

TELEGRAPHS.[3] 6 Abr 515, and 4 *ib.* 224; 26 & 27 Vic. c. 111; 29 & 30 *ib.* c. 3. As to Purchase by Postmaster-General under 31 & 32 *ib.* c. 116; 32 & 33 *ib.* c. 73.

TENANT for Life. See *ante*, Life, Tenant for.[4]

TENANT Fixtures. *See* Fixtures, *ante*, p. 205.

TENANTS in Common.[5]

TENDER.[6] 6 Abr. 518.

[1] See *Piers, In re*, 13 Ir. Ch. Rep. 459. *Richards v. Davies*, 13 C. B. N. S. 861—Ex. Ch.

[2] The words "reside or be," in the 43 Geo. 3, c. 161, ss. 25, 27, do not necessarily mean "dwell" or "sleep." *Att.-Gen v. M'Lean*, 1 H. & C. 750; 32 L. J. Ex. 101; 8 L. T. N. S. 113. Sect. 27 imposes the obligation upon one, who in person carries on business, to make a return in the parish in which his place of business is situate, whether he sleeps there or not, of articles liable to duty, kept, but not returned, elsewhere. *Ib.* One penalty only is incurred by the omission in any one year to return several lists, and to make the return in several places. *Ib.*

[3] A telegram, if properly identified, is equivalent to a letter. *Coupland v. Arrowsmith*, 18 L. T. N. S. 755. A telegraph company is not excused from liability for an erroneous transmission of a message, by the fact that its meaning was unintelligible to the company, so long as the words were plain. *Rittenhouse v. Independent Line of Telegraph*, 1 U. C. L. J. N. S. 247. Declaration, plaintiffs possessed of a telegraph cable lying at the bottom of the sea, and that the defendants were possessed of a ship and tackle, and so negligently and carelessly navigated the same that the anchor of their ship came into collision with the cable, and damaged it. Plea—that the cable was more than three miles from the shore of the sea, and that the defendants were aliens, and had no notice as to the position of the cable; and that the damage was committed in the course of drawing up the anchor of their ship, and in the ordinary course of navigation:—*Held*, the declaration and the plea good. *Submarine Telegraph Co. v. Dickson*, 15 C. B. N. S. 759; 33 L. J. C. P. 139; 10 L. T. N. S. 32. The obligation of the company to use due care and skill in the transmission of a message arises out of contract, there must therefore be a privity between employer and the company to sustain an action for negligence. *Slayford v. United Kingdom Telegraph*, 38 L. J. Q. B. 249.

[4] Where tenancy is determined by death of tenant for life, remainder man may distrain for the portion of rent due after the death of cesser of the estate. *Haines v. Welch*, 3 L. J. N. 279.

[5] To establish a tenancy in common by use and enjoyment, acts of ownership by all the alleged tenants in common, in various parts of the lands indifferently, must be proved. *Tisdall v. Parnell*, 14 Ir. Com. Law Rep. I.—Ex. Tenants in common in fee make a joint demise, and the lessee covenants with them, their respective heirs and assigns, to keep in repair. In an action on this covenant all the tenants in common must join. *Thompson v. Hakewill*, C. P. 11 Jur. N. S. 732. A tenant in common cannot be restrained by injunction, upon the application of his co-tenants, from cutting down and selling timber, where it appears that he is managing the estate according to the proper course of husbandry. *Arthur v. Lamb*, 2 Drew. & Sm. 428; 12 L. T. N. S. 338. One has no right to use the name of his co-tenant without his consent in an action of ejectment for non-payment of rent, and the court will order the name to be struck out by plaintiff's attorney. *Stubber v. Roe*, 15 Ir. C. L. Rep. 506.

[6] By 26 & 27 Vic. c. 24; 29 & 30 *ib.* 65, gold coin issued from the Colonial branch mints is made a "legal tender." An offer of payment under protest is a good tender, and defeats the right of a judgment creditor of a company to a *scire facias* against a shareholder, under 8 & 9 Vic. c. 16, s. 36. *Scott v. Uxbridge R. Co.* L. R. C. P. 596; 35 L. J. 293; 14 L. T. 596. A declaration

TERM Satisfied.[1] *See* 8 & 9 Vic. c. 112.

TERRIER.[2]

THAMES.[3] 6 Abr. 526. As to Conservancy, *see* 27 & 28 Vic. c. 113; 29 & 30 *ib.* c. 89.

THEATRES and Public Entertainments. 6 Abr. 526. *See* 6 & 7 Vic. c. 68.

I. As to License and Infringement of.[4]

stated an agreement by the defendants to repair the plaintiff's ship for a reasonable price to be charged by them to the plaintiff, and upon completion to redeliver the ship to the plaintiff upon payment of such price so to be charged. That the repairs were completed, and plaintiff was ready and willing to pay the defendants such price as aforesaid, whereof they had notice. Breach, that they did not charge a reasonable price, but demanded an exorbitant sum as the price of the repairs, and gave notice to the plaintiff that they would not re-deliver the ship until payment thereof, and detained the ship after she was completed until payment of the exorbitant sum. *Plea*, no tender of a reasonable price, or of any sum in respect thereof. *Replication*, waiver of the tender:—*Held*, that the declaration was good and the plea bad. By the terms of the agreement the defendants were bound to deliver their bill of reasonable charges, and the plaintiff was relieved from the necessity of making a tender. *Watson v. Pearson*, 9 Jur. N. S. 501; 11 W. R. 702; 8 L. T. N. S. 395—Exch.:—*Held*, also, that the replication was good, and not a departure in substance. *Ib.* An actual tender of a sum will be dispensed with where the demand of the larger sum was so made that it amounted to an announcement that it was useless to tender any smaller sum, for that if tendered it would be refused. And *semble*, this would not be varied by the fact that the party was about to tender less than the amount which turned out to be due. The point arose in an action for damage for not delivering cargo. *The Norway*, P. C. 13 W. R. 1085. Under an issue that a plea of tender is true in substance and fact, a subsequent demand and refusal may be given in evidence. *Bennett v. Parker*, 2 Ir. R. 89.

[1] A term was created in 1813, to secure repayment of a loan, which was repaid in 1837. In 1840 the land was demised for lives by the heir-at-law of the creator of the term. In 1843 the term was re-assigned by the satisfied creditor to a new incumbrancer, by direction of the heir-at-law:—*Held*, not satisfied so as to enure to the benefit of the lessee for lives. *Owen v. Owen*, 33 L. J. Ex. 237; 11 L. T. N. S. 137.

[2] Terriers containing the following:—"Easter Offerings. Every communicant, 2*d.*; every cow, 2*d.*; every plough, 2*d.*; every foal, 1*s.*; every hive of bees, 1*d.*; every house, 3½*d.*;"—are evidence of such a custom as excludes the common law right (if such exists) to a payment of 2*d.* for every member of a family of the age of sixteen as an Easter offering, as it includes items to which the common law right does not extend. *Reg. v. Hall*, 1 L. R. Q. B. 632; 35 L. J. M. C. 251.

[3] The conservators of the River Thames are entitled to compensation for land taken by a railway company. *Conservators of Thames v. Victoria Railway Company*, 3 L. J. N. 289. The conservators having prepared and fixed moorings in the bed of the river, in the parish of M., for W. to fasten his coal hulk to, granted to W. the exclusive license to fasten and keep fastened his coal hulk to the moorings, W. agreeing to pay them 30*l.* per annum towards the expenses of placing and maintaining the moorings; either party to terminate the agreement by giving a month's notice. The hulk never took the ground, but had not been removed since it first was placed there in 1863:—*Held*, that W. was not the occupier of the bed of the river where the moorings were placed, and not liable to be rated in respect thereof. *Watkins v. Overseers of Milton*, 3 L. R. Q. B. 350; 37 L. J. M. C. 73; 18 L. T. 601. A steam-tug not carrying passengers, but employed exclusively in towing ships for hire to and from the docks in the river, occasionally from and to places to the eastward, but generally from and to places to the westward of the Nore Light, is, while employed on any portion of the river between the limits named by the act, liable to penalties for not consuming its own smoke. *Walker v. Evans*, 2 El. & El. 356; 29 L. J. M. C. 22. As to erection of piers in, see *Attorney-General v. Conservators*, 1 H. & M. 1. *Temple Pier Company*, 34 L. J. Ch. 262.

[4] A portable theatre or booth, consisting of two caravans or waggons, drawn from place to place by horses and when joined together forming a temporary structure for the performance thereon of stage plays, is not a "tenement" within 2 & 3 Vic. c. 47, s. 46. *Fredericks v. Howie*, 1 H. & C. 381; 31 L. J. M. C. 249. But a booth theatre, which is taken to pieces, and carried from place to place for theatrical representations, is a place within sect. 11 of 6 & 7 Vic. c. 68. *Fredericks v. Payne*, 1 H. & C. 584; 32 L. J. M. C. 14. A house, licensed for music and dancing, was used to represent an entertainment in which there was a dialogue between parties bodily on the stage (with

II. As to Contracts relating to.[1]

THREATS, Threatening Letters, and Menaces.[2] 6 Abr. 528. *See* also *ante*, Duress.

all its accessories), and with dramatic action, and a regular plot performed by other parties, not upon the stage, but whose images were reflected upon it:—*Held*, a stage play within 6 & 7 Vic. c. 68. *Day v. Simpson*, 18 C. B. N. S. 680; 34 L. J. M. C. 149; 12 L. T. N. S. 386. The proprietor of a house of public resort, licensed for music and dancing under 25 Geo. 2, c. 36, afforded therein to the public an entertainment; there were an orchestra, stage and scenery, as in a theatre. Whether or not this was a stage-play requiring a license under 6 & 7 Vic. c. 68, was a question of fact and not of law. *Wigan v. Strange*, 1 H. & R. 41; 35 L. J. M. C. 31; 13 L. T. N. S. 371; 1 L. R. C. P. 175. The 25 Geo. 2, c. 25, s. 2, inflicts a penalty of 100*l.* on any person keeping a house in certain districts, for public dancing or music without a license. Two actions were brought by different informers against the same defendant for the penalty for keeping such a house without a license on two separate days, between Michaelmas 1866 and January 1867:—*Held*, that only one penalty could be recovered. *Garrett v. Messenger*, 15 W. R. 164; 16 L. T. N. S. 414; 2 L. R. C. P.; 36 L. J. C. P. 337. Where a room above the bar of a public-house was used for music and dancing every night, although no payment was required, and there was no public invitation to the room, the keeper of the house is liable to the penalty of 100*l.* under 25 Geo. 2, c. 36, s. 2. *Frailing v. Messenger*, 16 L. T. N. S. 494—C. P. W. was engaged as musical director at a theatre on the terms that he was to find all the music and engage the performers, and provide the musical instruments, pay for the printed music, for the paper on which the original music (if he provided any such) was written. He did under the direction of M., his employer, compose certain original music for a stage play. After the termination of his employment, H., by the license of M., performed the stage play, together with the music, without the permission of W.; whereupon, W. brought an action against H. for so using the music without his permission:—*Held*, that H., as licensee of M., was entitled to use the music. *Wallenstein v. Herbert*, 16 L. T. N. S. 453—Q. B. A person who hires a room in a building for a night or so for the performance of stage plays for gain, is not a person liable to the penalties in 6 & 7 Vic. c. 68, s. 2, for having and keeping a house or other place for the performance of stage plays without legal authority. *Reg. v. Strugnell*, 14 W. R. 193; 13 L. T. N. S. 433—Q. B.; 36 L. J. M. C. 78. Under a local act, in language similar to 25 Geo. 2, c. 36, s. 2, to bring a case within the statute, the music and dancing must be an essential part of the entertainment, and not merely accessories to it. *Quaglieni v. Matthews*, 6 B. & S. 474; 34 L. J. M. C. 116.

[1] By agreement between the defendant, the proprietor of a theatre, and D., it was stipulated, that D. should provide the actors, select the pieces for representation, and assume the management, without control of the defendant, who, on his part, was to provide musicians, scene-shifters, &c.; each party to defray the expenses of his own department, and the gross receipts to be equally divided. An action having been brought against the defendant for the recovery of penalties for "representing, or causing to be represented," a dramatic piece without the consent of the author or his assignee:—*Held*, he was not liable. *Lyon v. Knowles*, 32 L. J. Q. B. 71; 7 L. T. N. S. 670. A manager of a London theatre engaged a provincial actor, desirous of appearing on the London stage, for two years. The manager having delayed the actor's appearance for five months, he broke his engagement and went to another theatre:—*Held*, that he had a right so to do. *Fechter v. Montgomery*, 33 Beav. 22. A. agreeing with B., to "let B. have" a particular drama in discharge of 10*l.* owing by A. to B., is a complete assignment to B. of A.'s whole property in the drama. *Lacy v. Toole*, 15 L. T. N. S. 512.

[2] To constitute the offence of demanding money with menaces, under the 45th section of the 24 & 25 Vic. c. 96, the menace or threat must be of a character to produce in a reasonable man some degree of alarm or bodily fear, and of a nature to unsettle the mind, and take away free voluntary action. *Reg. v. Walton*, 9 Cox., C. C., 268; 1 L. & C. C. C. 288; 32 L. J. M. C. 79. The prosecutor having spoken to a female in the street at night, the prisoner, a policeman, told him he had been talking to a prostitute, and that he must go with the prisoner to Bridewell, but that if he would give him 5*s.* he might go about his business. The prosecutor gave him 4*s.* 6*d.*, and after that the prisoner said he should stick to him, and insisted on having the remaining 6*d.*, but it was not given;—*Held*, that a conviction for demanding money with menaces was right. *Reg. v. Robertson*, 11 L. T. N. S. 386—C. C. R. Whether the crime of which the prisoner was accused by the prosecutor was actually committed is not material, the prisoner being equally guilty if he intended by such accusation to extort money. *Reg. v. Richards*, 11 Cox C. C. 43. A threat need not be a threat of actual violence; it suffices if it be a threat to follow out some unlawful purpose. *O'Neill v. Longman*, 11 W. R. 947; 8 L. T. N. S. 657—Q. B. But

TIME, Computation of. 6 Abr. 528. *See* also *ante*, Sunday.

I. Months.[1]

II. Days.[2]

III. Reasonableness.[3]

TIME, Essence of Contract. *See post*, Vendor and Purchaser.

TITHES.[4] 6 Abr. 531. (As to annexation of Tithes to district churches, *see* 1 & 2 Wm. 4, c 45, and 28 Vic. c. 42.)

TITLE-Deeds.[5] 6 Abr. 434. *See* Abstract of Title, 1 Abr. 63; Deposit of Mortgage Deeds, 5 Abr. 497. As to Registering, *see* 25 & 26 Vic. c. 53.

TOLL.[6] 6 Abr. 536. *See* also Anchorage, Markets and Fairs; *post*, Turnpike Roads.

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it must be shown that the writer intended some injury to the rights of the party to whom addressed, and not a mere prejudice to his interests. *Wood v. Bowron*, 36 L. J. M. C. 5.

[1] In calculating a calendar month, if the computation commences during the course of a month, the right method is to proceed from a given day in one month to the day with the corresponding number in the ensuing month. *Freeman v. Read*, 4 B. & S. 176; 8 L. T. N. S. 458—Q. B. The word month, in all contracts, except there is evidence to show that calendar is meant, means lunar month, except in mercantile transactions in the city of London, where month means calendar month. *Turner v. Barlow*, 3 F. & F. 946. The word months primarily means lunar months, though the custom of a district might be sufficient to vary the meaning. *Rogers v. Hull Dock Company*, 11 L. T. N. S. 42.

[2] A policy, "until a ship had moored at anchor twenty hours in safety," and also a memorandum extending the period "during thirty days' stay in her last port of discharge," the thirty days are not substituted for the twenty-four hours, and they do not begin to run until the twenty-four hours have elapsed. *Mercantile Marine Insurance v. Titherington*, 34 L. J. Q. B. 11; 11 L. T. N. S. 340. In judge's orders the time is to be computed exclusively of the first day and inclusive of the last. *Weeks v. Wray*, 3 L. J. N. 26. The words, "not less than fourteen days distant from the date of such notice," in 4 Geo. 4, c. 33, s. 1, mean fourteen clear days. *Reg. v. Lauder*, 1 Ir. R. C. L. 225—Q. B.

[3] Where shares in a company are applied for, they must be allotted within a reasonable time, otherwise the applicant may refuse to receive them, and may recover back the deposit. *Ramsgate Hotel Company v. Montefiore*, 4 H. & C. 164; 35 L. J. Ex. 90. Where applied for on the 8th June, and allotted on the 23rd November, not an allotment within a reasonable time. *Ib.* A. under a bill of sale that the debtor would "immediately upon demand in writing," pay the principal and interest; and in case he did not immediately upon such demand, the creditor was empowered to seize and sell. There is no default, unless reasonable time is afforded for compliance with the demand. *Toms v. Wilson*, 4 B. & S. 442; 32 L. J. Q. B. 382—Ex. Ch. So when an hour is named, a reasonable time must elapse before seizure and sale. *Brighty v. Norton*, 3 B. & S. 305; 32 L. J. Q. B. 38.

[4] Land, the tithe of which has been commuted, is not subject to the extraordinary charge imposed upon hop-grounds by sect. 42, 6 & 7 Wm. 4, c. 71. *Trimmer v. Walsh*, 9 Jur. N. S. 1286; 32 L. J. Q. B. 364; 4 B. & S. 18; 8 L. T. N. S. 549—Ex. Ch. Overruled, 36 L. J. H. L. 318. A tithe-rent-charge owner is bound in estimating whether there is any "sufficient distress" on the premises to include the value of a growing crop, although not in such a state as to be capable of realization within forty days from the date of entry. *Ex parte Arnison* (*In re Heysham v. Heskett*), 37 L. J. Ex. 57. A charge of 2*s.* 6*d.* per day for a man in possession for arrears of rent-charge less than 20*l.* in amount, is excessive. *Ib. Ex parte Arnison*, L. R. 3 Ex. 56; 37 L. J. 57. As to extinguishment of tithes by a private act, see *Winteringham Tithes*, 9 Jur. N. S. 277—C. P. As to deduction of curate's salary, see *R. v. the Inhabitants of Sherford*, 36 L. J. 288; M. C. 113.

[5] A legal tenant for life has a right to recover from a contingent remainder-man the possession of the title-deeds. *Allwood v. Heywood*, 1 H. & C. 745, 32 L. J. Ex. 153; 7 L. T. N. S. 640. A tenant for life leases under a power, and the lessee mortgages the land. On the death of the tenant for life, the reversioner is entitled to the title-deeds of the estate. *Easton v. London*, 12 W. R. 53—Ex. See *Taylor v. Sparrow*, 9 Jur. 1226; 9 L. T. N. S. 438.

[6] By an act of parliament, a canal company was authorised to execute certain works for the purpose of making the river Tamar navigable for the distance of thirty

TOWNS Improvement.[1]

TRADE-Marks. 6 Abr. 540.

I. What are, and Property in.[2]

miles, and in consideration of the great charge and expense which the company must incur and suffer in making and maintaining the works thereby authorised to be made and maintained, it should and might be lawful to and for the company from time to time, and at all times thereafter, to ask, demand, take, and recover the several rates therein mentioned for the tonnage and wharfage of all minerals, &c., which should be carried upon the navigation, canal, and collateral cut, or any of them. The company only completed the navigation to the extent of about three miles:—*Held*, nevertheless, that the company was entitled to recover rates in respect of the conveyance of goods along the navigation so completed by the company. *Tamar Navigation Co. v. Wagstaff*, 9 Jur. N. S. 1324; 32 L. J. Q. B. 295; 4 B. & S. 288. A dock company was empowered by their act to charge for the landing of goods in their docks the several sums mentioned in the schedule thereto annexed, and for articles not therein particularised such sums as shall be equal to the sums affixed on goods "of a similar nature, package, value, and quality," in the schedule. All the charges mentioned in the schedule were of small fixed sums, none being *ad valorem* except the charge for "sculptured marble:"—*Held*, that the company was not entitled to make an *ad valorem* charge for the landing of goods not enumerated or at all approaching in "nature, value, and quality," to those enumerated in the schedule. *Southampton Dock Co. v. Hill*, 14 C. B. N. S. 243; 11 W. R. 646; 8 L. T. N. S. 280. Trustees empowered, by one section of a local act, to take such tolls as they might at any meeting direct, up to a certain maximum:—*Held*, not entitled, under that power, to remit a half toll on return loads, imposed by another section. Any alteration of tolls must affect the different classes mentioned in the act equally. *Barton v. Bennett*, 12 W. R. 709—Q. B. But one who had taken a lease of the tolls, subject to an order purporting to remit the half tolls:—*Held*, not entitled to exact them. *Ib. Strick v. Swansea Canal Company*, 16 C. B. N. S. 245; 12 W. R. 711; 10 L. T. N. S. 460. A public company incorporated by Act of Parliament and empowered to take tolls (within a fixed limit), in return for public service, is not bound, at common law, in the absence of the "equality clause," to exact the same tolls from all persons alike. *Hungerford Market Co. v. City Steam Boat Co.*, 3 Ell. & Ell. 365. A navigation act gave a toll of 1*d.* per ton on "stone, pebbles, sand, clay, manure, limestone," and of 3*d.* per ton on "other goods, wares, and merchandise" not before mentioned:—*Held*, that coprolites, which are fossil substances generally supposed to be the dung of animals, and which produce, when mixed with acid, sixty per cent of phosphate of lime and forty per cent refuse, and are then used as manure, were not stone or manure within the act, but came within the class of "goods, wares, and merchandise." *Dant v. Moore*, 9 L. T. N. S. 381—Q. B. By a railway act the tolls authorised by the act were to be paid to such persons, at such places upon or near the railway, and in such manner, as the directors should, by notice to be annexed to the list of tolls, appoint; and in case of refusal or neglect, on demand, to pay such tolls, the person to whom the tolls ought to have been paid is empowered to seize the goods for or in respect of which such tolls ought to have been paid, or any other goods belonging to the party which shall pass on or along the railway, and detain the same until payment of the tolls and charges; and if the goods are not redeemed within five days, the same shall be appraised and sold, and such tolls and charges satisfied thereout, as the law directs, in cases of distress for rent:—*Held*, that where the company seized and sold without complying with these conditions, no demand of the tolls having been made, and the seizure not having been made by "the person to whom the tolls ought to have been paid," and the sale having taken place without an appraisement, they became trespassers *ab initio*. *North v. London and S. W. R. Co.*, 14 C. B. N. S. 132; 9 Jur. N. S. 896; 32 L. J. C. P. 156; 11 W. R. 624; 8 L. T. N. S. 246. A toll reasonable in amount, but varying from time to time according to the value of money, is valid in point of law. *Lawrence v. Hitch*, 18 L. T. N. S. 483; 16 W. R. 813; 3 L. R. Q. B. 521; 37 L. J. Q. B. 209—Ex. Ch.

[1] The 10 & 11 Vic. c. 34, s. 52, imposes on the commissioners an obligation to place fences on the footways for the protection of foot-passengers. *Ohrby v. Ryde Commissioners*, 5 B. & S. 743. Section 24 does not authorise the creation of a nuisance by rendering the water unfit for use, in the drainage of towns into public rivers thereby directed. *Atty.-Gen. v. Kingston-on-Thames*, 12 L. T. N. S. 665; 34 L. J. Ch. 481. The combined effect of sects. 47 and 48 of the Towns Clauses Act, 11 & 12 Vic. c. 34, is to vest the management of highways in commissioners, and to clothe them with the powers and liabilities of surveyors of highways; and an action lies against them in their corporate capacity, at the suit of a person injured in consequence of the non-repair of a highway. *Hartnall v. Ryde Commissioners*, 10 Jur. N. S. 257; 33 L. J. Q. B. 39. *See* 36 L. J. Ex. 113.

[2] When a word, although a common appellative, has been appropriated by a trader to

II. Proceedings and Remedies connected with.[1]

TRADES and Businesses. 6 Abr. 540.

I. Sales of, and Contracts in restraint of.[2]

II. Of Trades Unions.[3]

TREASURE-Trove. 6 Abr. 542.[4]

TREES, Timber, and Underwood.[5] 6 Abr. 542. As to cutting down by Railway Companies. *See* 31 & 32 Vic. c. 119, s. 24.

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designate a particular manufacture, it may become a trade-mark. *Sexio v. Provezende*, 14 L. T. N. S. 314. *Young v. Macrae*, 9 Jur. 322. The jurisdiction of the court, in the protection of trade-marks, rests upon property, and not fraud in the defendant. *Hall v. Barrows*, 10 Jur. N. S. 55; 33 L. J. Ch. 204. *Leather Cloth Company v. American Leather Cloth Company*, 11 H. L. C. 523; 35 L. J. Ch. 53. There may be property in a trade-mark which, on the sale of the right to manufacture the goods which it designates, may also be sold and transferred. *Ib. Semble*, a paper descriptive of a trade does not constitute a trade-mark. *Ib.* 33 L. J. C. 199. Whether a trade-mark granted by the Cutlers' Company be legally assignable or not, a person who has purported to assign cannot dispute the validity of the assignment. *Bury v. Bedford*, 32 L. J. Ch. 741. The goodwill and a trade-mark belonging to a partnership form part of the assets. *Hall v. Barrows*, 33 L. J. Ch. 204.

[1] It is not necessary to give a right to an injunction, that a specific trade-mark should be infringed; it is sufficient that the court should be satisfied that there was on the whole a fraudulent intention of palming off the defendant's goods as those of the plaintiff. *Woollam v. Ratcliff*, 1 H. & M. 259. A defendant is liable, in equity, to account for the profits made by the user of a plaintiff's trade-mark. *Cartier v. Carlile*, 31 Beav. 292. *Edelston v. Edelston*, 9 Jur. N. S. 479; 7 L. T. N. S. 768,—C. The court will not grant an injunction to restrain the issue of goods bearing labels containing a false representation, when such falsehood is not an infringement of any right vested in the plaintiff. *Batty v. Hill*, 1 H. & M. 264; 8 L. T. N. S. 791.

[2] Upon a sale of goodwill for 170*l.*, the vendor covenanted that he would not carry on, or assist in the carrying on, of a business such as that carried on upon the premises assigned, within two miles, under the forfeiture of 200*l.*, as liquidated damages:—*Held*, that this covenant was broken by the vendor's supplying, from a place beyond the prescribed limit, goods (to the amount of 150*l.*) to customers residing within the district, at their solicitation. *Brampton v. Beddoes*, 13 C. B. N. S. 538; 7 L. T. N. S. 679. *See Harms v. Parsons*, 32 L. J. Ch. 247; 32 Beav. 398. A covenant not to be engaged in a specific trade, "or in any matter or thing whatsoever in anywise relating thereto," within a given district does not prevent the covenantor from lending money to a person engaged in such trade within the limits. *Bird v. Lake; Bird v. Turner*, 1 H. & M. 338.

[3] See 32 & 33 Vic. c. 61, to protect the funds of trades unions from embezzlement and misappropriation, and see *Hornby v. Close*, 36 L. J. M. C. 43. *Farrer v. Close*, 38 *id.* 132. The defendants, who were officers of a trades union, gave notice to workmen, by means of placards and advertisements, that they were not to hire themselves to the plaintiffs pending a dispute between the union and the plaintiffs. The bill prayed an injunction to restrain the issuing of the placards and advertisements, alleging that by means thereof the defendants had, in fact, intimidated and prevented workmen from hiring themselves to the plaintiffs, and that the plaintiffs were thereby prevented from continuing their business, and the value of their property was seriously injured and materially diminished:—*Held*, that the acts of the defendants, as alleged by the bill, amounted to a crime, and that the court would interfere by injunction to restrain such acts, inasmuch as they also tended to the destruction or deterioration of property. *Springhead Spinning Company v. Riley*, 6 L. R. Eq. 551; 37 L. J. Ch. 80; 16 W. R. 1138. *See* 8 C. & P. 642.

[4] In an indictment for concealing treasure-trove from the crown, it is not necessary to aver that the person concealed it fraudulently. The words "unlawfully, wilfully, and knowingly," are sufficient. *Reg. v. Thomas*, 1 L. & C. C. C. 313; 33 L. J. M. C. 22; 12 W. R. 108; 9 L. T. N. S. 488. *See Reg. v. Toole*, 10 Ex. C. C. 75. A., in ploughing, found large rings of gold of considerable value, and sold them for brass to B. for 5*s.* 6*d.*, saying where he found it. B. afterwards found out that they were gold, and offered them to a jeweller for sale as gold. Then B. said he had sold them to C. for brass. Then B. and C. were at a bank together, depositing part of the proceeds for which C. had sold the gold rings:—*Held*, that there was evidence to support a conviction of both B. and C. for knowingly concealing treasure-trove from the crown. *Ib.*

[5] Timber and underwood cut in the regular course of thinning considered as income, and that cut out of the regular course as capital as between tenant for life and remainder-men. The proceeds of the sale

TRESPASS. 6 Abr. 545. *See ante*, Assault and Battery; False Imprisonment; Malicious Prosecution.

I. As to Land.[1]

II. As to Persons and Personal Property.[2]

TRIAL. 6 Abr. 565.

I. In Civil Proceedings.

(A) *Notice of Trial and extending time for.*[3]

(B) *Countermand of.*[4]

(C) *Of the Jury. See ante, Jury.*

(D) *Entry of Causes for.*[5]

(E) *New Trial.*[6]

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of gravel from waste lands, which had been usually sold for many years, considered income. *Earl Cowley v. Wellesley*, M. R.; 1 L. R. Eq. 656. By order of the court, timber was cut upon the estate of an infant, who was equitable tenant in fee-simple, with an executory devise over in the event of his dying under twenty-one, and without issue, which event happened: — *Held*, that the produce of the timber formed part of the personal estate of the infant. *Dyer v. Dyer*, 11 Jur. N. S. 721,—R. Although the wording of s. 32, 24 & 25 Vic. c. 96, is ambiguous, yet held, that an indictment for injury to trees under this section could be supported by proving injury to several trees, amounting in the whole to 5*l.*, as well as by proving injury to one tree amounting to 5*l.*, provided the injury was done at the one time, or so continuously as to form one transaction. *Reg. v. Shepherd*, 1 L. R. C. C. R. 118; 37 L. J. M. C. 45; 17 L. T. 482.

[1] Entry is not necessary to the vesting of a term of years in the lessee, but for the purpose of maintaining an action of trespass, the lessee must enter. *Harrison v. Blackburn*, 17 C. B. N. S. 678. A mere servant in possession of premises as such, may be expelled by his employers, so may a tenant at will by the landlord after the termination of the tenancy. *White v. Bailly*, 30 L. J. C. P. 253. Where a board of health under the Act of 1848 made bye-laws regulating the bathing and the bathing machines of the defendant, does not take away the rights of the owner of the soil to maintain trespass against the licensees of the machines. *Mace v. Philcock*, 33 L. J. C. P. 124; 15 C. B. 600. One tenant in common cannot maintain trespass or trover against his co-tenant for cutting and carrying away the grass of their land. *Jacombs v. Seward*, 38 L. J. C. P. 252. It is questionable whether the owner of a dog is answerable in trespass for every unauthorised entry of the animal into the land of another. *Read v. Edwards*, 34 L. J. C. P. 31. Or whether it is a trespass to pass over land in a balloon? *Kenyon v. Hart*, 6 B. & S. 249.

[2] An action to recover damages for a trespass committed abroad, will not lie, if no such remedy is given by the English law. *The Halley*, 2 L. R. P. C. 193; 37 L. J. Adm. 33; 18 L. T. 879. See *Scott v. Seymour* (*Lord*), 1 H. & C. 219; 32 L. J. Ex. 61; 8 L. T. N. S. 511,—Ex. Ch. Title to property created merely by the act of reducing a thing into possession necessarily implies a reduction into possession effected by an act which is not in any way of a wrongful nature. *Blades v. Higgs*, 11 H. L. Cas. 621.

[3] Where notice of trial has been given for a particular sitting, and at the request of the defendant the cause is made a remanet, a countermand of trial by notice four days before such subsequent sitting is sufficient. *Sully v. Noble*, 1 H. & C. 809; 32 L. J. Ex. 145; 7 L. T. N. S. 720. Under the Act 1862, s. 101, the judge may extend the time for proceeding to trial after the expiration of twenty days notice. *Nosotti v. Hudson*, 3 L. R. C. P. 293; 17 L. T. 479. Where the trial of a town cause is postponed by order of a judge from one sitting to another on the application of the defendant, a fresh notice of trial is not necessary, *Claudet v. Prince*, 8 B. & S. 360; 36 L. J. Q. B. 196. Notice of trial may be effectual although the plaintiff before the jury are sworn, applies to strike out one of the counts in the declaration and issues thereon. *Beresford v. Geddes*, 36 L. J. C. P. 115.

[4] After countermand of trial and death of one of the defendants, the surviving defendant is not entitled to costs of the day. *Pell v. Lennell*, 37 L. J. C. P. 191.

[5] Causes for every sitting within term or after term shall be entered before five o'clock P.M. on the day next but one preceding the first day of such sitting. *Reg. Gen.* Q. B. C. P. and Ex. T. V. July 9, 1868; 3 L. R. Q. B. 783.

[6] Although the court will relax the rule as to time of moving, where a case of fraud, surprise, or mistake is made out, yet it will not do so upon evidence showing the great difficulty of moving in time. *Pain v. Terry*, 12 L. T. N. S. 269. A judge's mistaken ruling as to a matter collateral to the issue, not being ground for a bill of exceptions, will never be made ground for a new trial, unless injustice has been occasioned by the mistake. *Henman v. Lester*, 12 C. B. N. S. 776; 9 Jur. N. S. 601. *Norbury* (*Earl*) *v.*

II. Criminal Proceedings.[1]

TROVER, or Action for the Conversion of Chattels. 6 Abr. 576.

I. By and against Whom, and for what Action Maintainable.

II. The Conversion or Injury.

III. Verdict, Damages, and Judgment.

I. By and against Whom, and for what Action Maintainable.[2]

Kitchin, 7 L. T. N. S. 685. When evidence, legitimately admitted in the course of a cause, raises a latent ambiguity, evidence to explain that is properly admissible; no ground for a new trial. *Bruff v. Conybeare*, 13 C. B. 263. That non-direction is only a ground for granting a new trial where the verdict is against the weight of evidence. *Great Western R. C. v. Braid*, 1 Moore, P. C. C. 101; 8 L. T. N. S. 31. *Ford v. Lacey*, 30 L. J. Ex. 352. An inconsistency in the verdict of a jury is no ground for a new trial, unless it is such that their opinion upon the substantial question for their decision cannot be ascertained. *Ellyatt v. Ellyatt*, 33 L. J. Ma. Ca. 137. *See Adams v. Midland R. Co.*, 31 L. J. Ex. 35. *Mostyn v. Coles*, *ib.* 151. The court will not grant a new trial on the ground of the absence of a material witness, when the proceedings have been regular, and the litigant applying does not clearly show merits. *Dunn v. Edwards*, 19 L. T. N. S. 394. In slander, a new trial on the ground that the damages were very inadequate was refused where it did not appear that there had been any misconduct or mistake on the part of the jury. *Forsdike v. Stone*, 37 L. J. C. P. 301; 3 L. R. C. P. 607; 18 L. T. N. S. 722. But where the jury found a verdict for five guineas for a trifling assault, acting upon information given by the plaintiff's counsel that a verdict for less would not give the plaintiff her costs, new trial granted without imposing any terms. *Poole v. Whitcomb*, 12 C. B. N. S. 770. It is not a ground for a new trial, that depositions under a commission were admitted which were taken *vivâ voce* instead of on written interrogatories. The objection ought to have been taken at chambers. *Grill v. General Iron Screw Collier C.*, 1 L. R. C. P. 600; 35 L. J. 321. A suggestion of perjury on the part of the defendant and his witnesses, and that fresh evidence has been discovered by the plaintiff since the expiration of the time for moving, affords no ground for asking the court to dispense with the 50th rule of H. T. 1853. *Gambart v. Mayne*, 14 C. B. 320. It is not necessary to have a copy of the judge's notes at the time of moving for a new trial in a case tried, under a judge's order, before a county court. *Morrison v. Wookey*, 15 C. B. N. S. 457. Where a cause ordered to be tried in a county court, has been tried in term, no motion for a new trial can be made without leave of the superior court after the expiration of four days from the day of trial. *Copcutt v. The Great Western R. C.*, 36 L. J. C. P. 240.

[1] A new trial, in a case of felony, cannot be granted by any court. The point was not argued in the case of *Reg. v. Scaife*, 17 Q. B. 238, and it is not an authority for the contrary. *Reg. v. Bertrand*, 1 L. R. P. C. 520. After a verdict of not guilty upon an indictment for obstructing a highway, a new trial will not be granted on the ground that the verdict was against evidence; although the judge who tried the case reports that he is dissatisfied with the verdict. *Reg. v. Johnson*, 2 Ell. & Ell. 613. The justices of assize have a discretionary power in cases of necessity to discharge a jury in cases of felony without their agreeing to a verdict, and the prisoner may be again legally tried and legally convicted. *Charlotte Winsor v. The Queen*, 1 L. R. Q. B. 289; 35 L. J. M. Ca. 121.

[2] The owner of goods delivered them on credit, on a supposed contract of sale, to E. G., professing to act for G. & Co., packers, but in reality to appropriate them fraudulently to himself. E. G., having received the goods, handed them to the defendant, an auctioneer, who made advances upon them in good faith:—*Held*, that he was liable in trover to the owner. *Hardman v. Booth*, 32 L. J. Ex. 105. Various quantities of tallow, the property of different persons, were deposited in warehouses on a bank of the Thames. A fire took place, the tallow melted and flowed down into the river, from which several portions of it were unwarrantably taken by A., who sold some of it to B., which was taken from him, by the police. The magistrate ordered the tallow to be detained, under the 2 & 3 Vic. c. 71, s. 29, and it was sold by direction of the commissioner of police, C. having purchased the tallow from the police:—*Held*, that A. had no property in the tallow to maintain an action against C. for its conversion. *Buckley v. Gross*, 3 B. & S. 566; 32 L. J. Q. B. 129; 7 L. T. 743. Certain scrip certificates for shares were pledged to secure an advance. The pledgor became bankrupt and the pledgee, sold a portion without making a demand for payment or any notice of his intention of selling. The

II. The Conversion or Injury.[1]

III. Verdict, Damages, and Judgment.[2]

TRUCK Act.[3] 6 Abr. 587. *See* 1 & 2 Will. 4, c. 37.

TRUSTEE.[4] 6 Abr. 588. Acts for relief of, *See* 10 & 11 Vic. c. 96; 12 & 13 *ib.* c. 74; 13 & 14 *ib.* c. 35; 22 & 23 *ib.* cc. 35, 145. Frauds by, see 26 & 27 *ib.* c. 115; 30 & 31 *ib.* c. 97.

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assignee without making any tender of the debt, brought trover against the pledgee:—*Held*, not maintainable. *Donald v. Suckling*, approved of. *Halliday v. Holgate*, Ex. Ch. 37 L. J. Ex. 174; 3 L. R. 299. *Broadbent v. Varley*, 12 C. B. 214. The assignees of a bankrupt on his own petition who has delivered to a creditor, goods by way of fraudulent preference, and who has sold, or otherwise disposed of them before the petition, the assignees cannot maintain an action of trover, or for money had and received. *Marks v. Feldman*, 38 L. J. Q. B. 220.

[1] If a principal ratifies an unauthorised purchase by his agent of a chattel which the vendor had no right to sell, he is guilty of a conversion, although he had no knowledge of the circumstances which made the sale unlawful. *Hilbery v. Hatton*, 2 H. & C. 822; 33 L. J. Ex. 190; 10 L. T. N. S. 39. A. deposited a dock-warrant for brandies with B. as a security for a loan, which was to be repaid on the 29th of January, or, in default, the brandies were to be forfeited. On the 28th, B. agreed for the sale of the brandies to C., and on the 29th delivered to him the dock-warrant, and C. took actual possession of the brandies on the 30th:—*Held*, that the sale on the 28th, and the delivery of the dock-warrant to the vendee on the 29th, A. having the whole of that day to redeem it, amounted to a conversion. *Johnson v. Stear*, 15 C. B. N. S. 330; 33 L. J. C. P. 130; 9 L. T. N. S. 804. *Tillot v. Wilkinson*, 2 H. & C. 72; 34 L. J. Ex. 22; —*Held*, secondly, that on these facts there was evidence of a conversion. *Ib.*

[2] In an action for the conversion of goods, of which the plaintiff has the immediate right of possession, the measure of damages is the full value of the goods at the time of the conversion. *Edmondson v. Nuttall*, 17 C. B. N. S. 280. *Johnson v. Stear*, 15 C. B. N. S. 330; 33 L. J. C. P. 130; 9 L. T. N. S. 804. Although, if the plaintiff obtains satisfaction, he cannot bring trover in respect of the same chattel against a party to whom the defendants has transferred it; yet if he has not obtained satisfaction, he may do so. *Marston v. Phillips*, 12 W. R. 8; 9 L. T. N. S. 289—Q. B. A delivery order was shown at the defendants warehouse to their clerk, who was asked by the plaintiffs' clerk "if it was all in order;" to which he answered "yes:"—*Held*, in trover for it, the plaintiffs were entitled to recover; that the defendants must be taken to have assented that there was the number of barrels of flour stated in the order, and were estopped from afterwards denying it. *Woodley v. Coventry*, 32 L. J. Ex. 185; 8 L. T. N. S. 249.

[3] A framework-knitter is an artificer within the meaning of 1 & 2 Wil. 4, c. 37. *Moorhouse v. Lee*, 4 Fost. & Fin. N. P. Cas. 354. A butty collier, who undertakes for the performance of a piece of work by the day, or ton, and employs others to assist him, to whom he pays wages, is not an artificer within the act. *Sleeman v. Barrett*, 2 H. & C. 934; 33 L. J. Ex. 153; 9 L. T. N. S. 834. To constitute the offence it is not necessary that the payment of wages in goods instead of money should be the result of any contract between the employer and the workman; the mere payment is enough. *Wilson v. Cookson*, 13 C. B. N. S. 496; 32 L. J. M. C. 177; 8 L. T. N. S. 53. The offence is not purged by a subsequent payment in money, whether made voluntarily or compulsorily under an order of justices. *Ib.* Where an employer deducted from the wages of his artificer 6*d.* a week in respect of a subscription to a club, the employer kept the club funds, and was to supply medicine and medical attendance to the subscribers whenever they required it:—*Held*, that this was a "contract to supply" medicine and medical attendance; that the deduction was allowable, though the artificer had never required or received any medicine or medical attendance. *Cutts v. Ward*, 36 L. J. Q. B. 161; 2 L. R. Q. B. 357. *Pillar v Llyvig Coal Company*, 38 L. J. C. P. 294. *Archer v. James*, 31 L. J. C. B. 153; 2 B. & S. 61. *Semble*, the words permitting an employer to supply "any materials, tools, or implements," contemplate only an absolute sale of the materials by the employer to the artificer, and not a hiring. *Ib.*

[4] Land held by trustees for public purposes is subject not only to a judgment, but to an elegit upon the judgment. *Worrall Waterworks Company v. Lloyd*, 1 L. R. 1 C. P. 719. See *Steels v. Mayor, &c., of Liverpool*, 14 W. R. 311. The rule is imperative that, in the absence of any contract for that purpose, no person can, by acting as trustee, derive any pecuniary benefit to himself. *Crosskill v. Bower*, 32 Beav. 86.

TURNPIKE-ROADS. 6 Abr. 592. *See* also *ante* Highways, and 3 Geo. 4, c. 126 ; 4 *ib.* 4, c. 95 ; 7 *ib.* 4, c. 24 ; 4 & 5 Vic. cc. 33, 51 ; 11 & 12 *ib.* c. 96 ; 12 & 13 *ib.* c. 87 ; 13 & 14 *ib.* c. 79 ; 21 *ib.* c. 24 ; 25 & 26 *ib.* c. 56 ; cont. c. 72 ; 26 & 27 *ib.* cc. 78, 94. Exempt. from toll, 4 & 5 Vic. c. 33 ; 24 & 25 *ib.* c. 126 Locomotives on, 24 & 25 Vic. c. 70 ; 28 & 29 *ib.* c. 83. Nuisances on, 27 & 28 Vic. c. 75. Trustees (meetings), 3 & 4 Vic. c. 39.

I. Construction of Statutes.

II. As to Borrowing Money, and Creditors of Tolls.

III. Making, Diverting, and Repairing Roads.

IV. Tolls.

(A) *What, and when Payable, and evading Payment.*

(B) *Demising and Letting.*

(C) *Exemptions from Toll.*

(*a*) *Persons and Conveyances on Public Duty.*

(*b*) *Farm Produce and Conveyances.*

(*c*) *Cattle.*

V. Contribution from Parish for Repairs.

VI. Steam-Engines on.

I. Construction of Statutes.[1]

II. As to Borrowing Money, and Creditors of Tolls.[2]

III. Making, Diverting, and Repairing Roads.[3]

IV. Tolls.

(A) *What, and when Payable, and evading Payment.*[4]

[1] The local act authorised the taking of tolls on horses drawing, *inter alia*, a "cart" and by the interpretation clause "cart" was declared to include "all carts, &c., &c., &c., adapted or used for the conveyance of heavy articles, and thrashing machines":—*Held*, that all former acts excepting thrashing machines, were repealed on the ground of repugnance, although there were no express words of repeal. *Ablett v. Pritchard*, 1 L. R. C. P. 210; 35 L. J. 136. Under s. 123, 4 Geo. 4, c. 126, as to impounding horses found tethered or wandering does not apply where person in care of them is within a few yards of where they are. *Mann v. Jeffries*, 35 L. J. M. C. 143.

[2] The liability of the occupiers of land adjoining a turnpike-road, under s. 113, 3 Geo. 4, c. 121, only extends to the making and laying sufficient trunks, tunnels, plates, or bridges, where any carriage-ways or foot-ways lead out of the turnpike-road into the lands or grounds adjoining thereto. *Merivale v. Trustees of Exeter*, 3 L. R. Q. B. 149; 37 L. J. M. C. 40. Where prior to 12 & 13 Vic. c. 87, s. 7, trustees of a turnpike-road had borrowed money on the security of the tolls (paving, lighting, and other rates were also included in the security), and after the passing of the act, they borrowed money on the same securities at a cheaper rate of interest, with which they paid off the old loan:—*Held*, this was not such a borrowing *after* the act as entitled them to set apart a sinking fund *before* paying the necessary repairs of the roads, nor to loans borrowed on the security of rates as well as tolls. *Chatham Board of Health v. Rochester Commissioners*, 1 L. R. Q. B. 24; 37 L. J. Q. B. 31.

[3] It is the duty of the trustees to cleanse and scour watercourses, not the occupiers of the adjoining lands. *Merivale v. The Trustees of the Exeter Turnpike Road*, *supra*. To empower the justices to make an order for contribution out of highway rates towards the repairs of a trust turnpike-road, the justices must ascertain the state of the road, and the necessity or the expediency of such contribution. Therefore, a retrospective order after the road has been repaired is bad. *Brown v. Evans*, Q. B. 34 L. J. M. C. 101. As to parishes or highway boards contributing to the repair of turnpike-roads. See 4 & 5 Vic. c. 59; 26 & 27 *ib.* c. 94; 28 & 29 *ib.* c. 119; 31 L. J. Q. B. 18; 34 *ib.* 101. Upon an information, under 4 & 5 Vic. c. 59, s. 1, alleging that the funds of the trust were insufficient for the repairs of the turnpike-roads comprised therein, and that part of the road was out of repair. The justices have jurisdiction to order a portion of the highway rate to be applied. *Roberts v. Roberts*, 3 B. & S. 183; 7 L. T. N. S. 320.

[4] A vehicle composed of a rough skeleton of woodwork, having two wheels placed behind the centre, the forepart being shod with iron, which in going down hill comes in con-

(B) *Demising and Letting.*[1]

(C) *Exemptions from Toll.*

(*a*) *Persons and Conveyances on Public Duty.*[2]

(*b*) *Farm Produce and Conveyances.*[3]

tact with the ground, retarding its descent, is not a wheel carriage, within s. 121 of 3 Geo. 4, c. 126. *Radnorshire Board v. Evans*, 3 B. & S. 400; 32 L. J. M. C. 100; 7 L. T. N. S. 677. Where a common carrier had paid the duty imposed on a van *bonâ fide* used in the carrying of goods, "but occasionally only used in conveying passengers:" this is a modified license only, to carry passengers; and that the van did not come within the description of a local act imposing a toll each time of passing, "upon any carriage, &c., licensed to carry passengers for hire." *Eatwell v. Richmond*, C. P. 12 L. T. N. S. 52. But where a carrier was licensed as such in respect of a caravan, *bonâ fide* used for carrying goods for hire, and frequently passengers for hire:—*Held*, that the caravan came within a local act, imposing a return toll in respect of "a stage coach, caravan, &c., conveying passengers or goods for pay or reward." *Comley v. Carpenter*, 18 C. B. N. S. 378. As to tolls payable for passing and repassing same day. See *James v. Dickenson*, 14 C. B. N. S. 416. Two one-horsed carts went through a turnpike-gate and returned. The horses were then unyoked and put to another vehicle of the same owner, from which the horses that had drawn it some distance on the turnpike-road were removed before reaching the gate. The driver on passing the gate with the second vehicle, paid only a smaller toll, contending that he was not liable to pay in respect of the two horses so yoked to the second vehicle, as they had paid toll:—*Held*, evidence on which a justice might find that this was done to evade the payment of toll, and convict under 3 Geo. 4, c. 126, s. 41. *Hartley v. Bowlzer*, 11 L. T. 767.—Q. B.

[1] By s. 57 of 3 Geo. 4, c. 126, all contracts or agreements for letting of turnpike-tolls, signed by the trustees or their clerk, and the lessee or farmer, and his sureties, shall be valid, notwithstanding the same may not be by deed, or under seal:—*Held*, that an agreement for the letting of tolls, signed by the clerk of trustees, and by the lessee, was valid, notwithstanding it had not been signed by the sureties. *Markham v. Stanford*, 14 C. B. N. S. 376; 8 L. T. N. S. 277. A lessee of turnpike tolls compounded with a person using the road for tolls for three years:—*Held*, valid under 3 Geo. 4, c. 126, s. 55. *Stott v. Clegg*, 13 C. B. N. S. 619; 32 L. J. C. P. 102; 7 L. T. N. S. 714.

[2] A carriage and horses belonging to the Queen, driven by her coachman, and used by a member of her household, or his family, though not upon her service, are exempt from tolls. *Westover v. Perkins*, 2 Ell. & Ell. 57. The exemption from toll under s. 33, 3 Geo. 4, c. 106, of a clergyman going to visit the sick applies, although he may have other persons with him in his carriage, and the toll-gate not in his parish. *Layard v. Ovey*, 3 L. R. Q. B. 415; 18 L. T. 632. A curate of parish A. not licensed by his bishop to perform duty in an adjoining parish B., but employed by the incumbent of parish B. during his temporary absence, is not exempt from toll upon going through a toll-bar in parish B. to perform clerical offices in parish B. *Brunskill v. Watson*, 3 L. R. Q. B. 418; 37 L. J. M. C. 103; 18 L. T. 430. The exemption in 3 Geo. 4, c. 126, s. 32, of carts conveying stores for her Majesty's forces, applies, although the cart conveying such stores is the cart of a common carrier hired for that purpose by the contractor for such stores. *London and South Western Railway Company v. Reeves*, 1 L. R. C. P. 580; 35 L. J. M. C. 239; 14 L. T. N. S. 662. Volunteers in uniform, going to attend a voluntary rifle match, at a duly appointed place of rifle practice, but open to all the world, are not entitled to exemption from toll, under 24 & 25 Vic. c. 126. *Teather v. Turner*, 11 W. R. 425; 7 L. T. N. S. 785.—Q. B. The exemption of volunteers from toll contained in s. 45 of the Volunteer Act, 26 & 27 Vic. c. 65, does not extend to members of the yeomanry cavalry, and therefore such members are not exempt if they drive instead of ride to the place of meeting of their corps. *Humphrey v. Bethel*, 35 L. J. M. C. 150. But see *Stephenson v. Taylor*, 1 B. & S. 95; 38 L. J. M. C. 145. The 27 Vic. c. 3, s. 72 (the Mutiny Act of 1864), by which her Majesty's officers and soldiers on duty are exempted from payment of any duties and tolls in passing along or over any turnpike or other roads or bridges otherwise demandable:—*Held*, that this exemption did not apply to the case of a floating bridge propelled from one side of the river to the other by steam power, and kept in its course by parallel chains laid across the bed of the river. *Ward v. Gray*, 34 L. J. M. C. 146; 13 W. R. 653 Q. B. The exemption from toll, granted by the 3 & 4 Vic. c. 88, s. 1, to police constables passing with horses along any turnpike road or bridge, extends to a road or bridge made and erected by a company under an act of Parliament. *Longland v. Andrews; Longland v. Doling*, 3 H. & C. 564; 34 L. J. Ex. 90; 12 L. T. N. S. 233. As to sea-faring persons, see 10 L. T. 338 Q. B.

[3] R. went through a turnpike with a cart laden with garden produce, packed in baskets, paid the toll, and returned next day with the cart laden with manure, upon the top of which were placed the empty baskets.

(*c*) *Cattle.*[1]

V. Contribution from Parish for Repairs.[2]

VI. Steam Engines on.[3]

U.

UNIFORMITY of Process Act. 2 & 3 Wm. 4, c. 39; 3 & 4 *ib.* c 67.

UNION of Parishes. As to Assessment of, 25 & 26 Vic. c. 108; 27 & 28 *ib.* c. 39. Chargeability of, 28 & 29 *ib.* c. 79. Relief in aid, 25 & 26 *ib.* c. 110; 26 & 27 *ib.* c. 4.

UNIVERSITIES.[4] 6 Abr. 605. As to voting papers, *see* 24 & 25 Vic. c. 53, and 31 & 32 *ib.* c. 65.

USAGE. 6 Abr. 606 ; *see* Custom.

USE and Occupation. 6 Abr. 608. *See* also *ante*, Landlord and Tenant.

I. Form of Action.[5]

The toll-keeper demanded toll in respect of the baskets, which R. refused to pay:—*Held*, exempt from payment by s. 28 of 3 Geo. 4, c. 126, which is unrepealed by 5 & 6 Will. 4, c. 18, s. 1. *Richens v. Wiggens*, 32 L. J. M. C. 144; 11 W. R. 617; 8 L. T. N. S. 384, Q. B. 3 B. & S. 953. Barley being carried to a mill for the purpose of being ground into meal as food for the grower's cattle, and barley-meal, the yield of such barley, is fodder within s. 36, 3 Geo. 4; and the horse and cart conveying the same are entitled to exemption. *Clements v. Smith*, 3 Ell. & Ell. 238; 30 L. J. M. C. 16. The provision in general act, 16 & 17 Vic. c. 135, s. 6, as to thrashing machines may be superseded within the area of a local act, and liable to pay toll. *Ablert v. Pritchard*, 1 L. R. C. P. 210; 14 L. T. 16; 35 L. J. M. C. 105. Where a local act engrafted on the exemption of agricultural machines contained in 3 Geo. 4, c. 126, s. 32, an exception of machines, "let to hire, or travelling for the purpose of being used by any person other than the owner:"—*Held*, that a thrashing machine, owned by a person who was taking it along the road for the purpose of thrashing for hire, was within the exception. *Rapley v. Richards*, 12 W. R. 864.—Q. B.

[1] The exemption from toll on a turnpike-road, contained in 1 & 2 Will. 4. c. 25, s. 1, in respect of sheep or cattle going to pasture is not confined to farmers occupying farms in the locality of a toll-gate. *Warmby v. Deakin*, 14 C. B. 124; 32 L. J. M. C. 201; 8 L. T. 319.

[2] A turnpike act provided for the application of the tolls to salaries, interest of debt, repairs of road not exceeding 800*l.*, reduction of principal debt, and repairs of road. The estimated revenue of the trust was 1087*l.*, and expenditure 1017*l.*; and after allowing for salaries, interest, and 800*l.* towards repairs, the surplus was applied towards reduction of principal debt, leaving a deficiency of 217*l.*, to be raised by parochial contributions:—*Held*, that under 4 & 5 Vic. c. 55, the justices might make an order under that statute for payment of such contribution from the parish. *Mawby v. Hopkinson*, 10 L. T. N. S., 27.—Q. B.

[3] 27 & 28 Vic. c. 75, extends the 5 & 6 Will. 4, c. 50, s. 70, as to the erection or use of steam-engines within the distance of twenty-five yards from any part of any turnpike road, unless within some house or other building, or behind some wall, fence, or screen sufficient to conceal and screen the same from the road, so that the same may not be dangerous to passengers, horses, or cattle. A portable steam-engine, upon wheels and drawn by horse-power, used to drive a threshing machine within a barn, but not fixed thereto or to the soil, is within the 5 & 6 Will. 4, c. 50, s. 70. *Smith v. Stokes*, 4 B & S. 84.

[4] A claim of cognisance by the University of Oxford must be made at the earliest reasonable opportunity, but need not be before appearance in the action. *Parsons v. Willoughby de Broke (Lord)*, 13 W. R. 315, 402; 11 L. T. N. S. 628—Q. B. The power to punish by imprisonment or otherwise, constitutes the person intrusted with that power, a judge of record, and no action lies against him for an adjudication on a matter within his jurisdiction. *Kempe v. Neville*, 10 C. B. 523; 31 L. J. C. P. 158.

[5] An action for use and occupation may be maintained by an auctioneer, letting land without naming his principal as the contracting party, against a person who has received possession from him, and has occupied, under the contract constituted by his being the highest bidder at the auction. *Fisher v. Marsh*, 34 L. J. Q. B. 177; 6 B. & L. 411; 12 L. J. N. S. 604. A tenant from year to year, whose tenancy originally was created by writing, assigned his interest; but the landlord, though he received rent, did nothing by

USURY.[1] 6 Abr. 615. Statute repealing laws against, 17 & 18 Vic. c. 90.

V.

VACCINATION.[2] 6 Abr. 616. Stats. 3 & 4 Vic. c. 29; 16 & 17 *ib.* c. 100; 24 & 25 *ib.* c. 59; 30 & 31 *ib.* c. 84, consolidating the law relating to.

VAGRANT.[3] 6 Abr. 617. *See* 5 Geo. 4, c. 83, and 1 & 2 Vic. c. 88; 7 & 8 *ib.* c. 101; 8 & 9 *ib.* c. 10; 31 & 32 *ib.* c. 52.

VAULT.[4]

VENDORS and Purchasers. 6 Abr. 618. See *ante*, Auction; Covenant; Frauds, Statute of; Goods Bargained and Sold; Goods Sold and Delivered; Infant; Lunacy; Set-Off; Stoppage in Transitu; Warranty, *post.*

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way of accepting the assignee as tenant:—*Held*, the original tenant is liable for the rent. *Shine v. Dillon*, Ir. Rep. 1 Com. Law, 277. Where a tenancy has been determined by a regular notice to quit, the accidental detention of the key by the tenant (who has quitted the premises and removed his goods) for two days beyond the expiration of the term, does not amount to evidence of use and occupation, so as to render him liable for another quarter. *Gray v. Bompas*, 11 Com. B. Rep. N. S. 520. A. purchased lands from B. under a contract of sale not in writing, and remained in possession for several years without paying rent:—*Held*, that the facts rebutted the implied contract to pay rent. *Corrigan v. Woods*, 1 Ir. R. C. L. 73—Exch. In an action for use and occupation against an executor he is personally liable, and not in his representative capacity. *Nixon v. Quinn*, 2 Ir. R. C. L. 247—Exch. As to tenant holding over, see *Levy v. Lewis*, 30 L. J. C. P. 141.

[1] A loan of money at usurious interest before the repeal of 12 Ann. c. 16, is a good consideration for a promise, made after the repeal, to repay the loan at the same interest. *Flight v. Reed*, 32 L. J. Ex. 265; 1 H. & C. 790; 8 L. T. 638.

[2] Where a parent, or person having the care, nurture, or custody of a child, had incurred and paid the penalty for neglecting to have it vaccinated within the time specified by 16 & 17 Vic. c. 100, and 24 & 25 Vic. c. 59, a continuous neglect held not a further breach of the statute. *Pilcher v. Stafford*, 4 B. & S. 775; 33 L. J. M. C. 113. But in *Allen v. Wortley*, H. T. 1870, Q. B., the court held that the justices might make orders *toties quoties* to enforce vaccination.

[3] By 5 Geo. 4, c. 83, a person is designated as a rogue and vagabond who plays or bets in any street, highway, or other open and public place, at or with any table or instrument of gaming:—*Held*, that the current coin of the realm are not "instruments of gaming" within the statute. *Watson v. Martin*, 11 L. T. N. S. 372—Q. B. A conviction for tossing in a public highway with halfpence is bad. *Ib.* The 5 Geo. 4, c. 83, s. 17, requires convictions to be returned to the next general or quarter sessions, and filed and kept on record. A previous conviction under the act can be proved only by proof of the record, and neither oral testimony nor the minute-book of the convicting justices suffices. *Giles v. Siney*, 11 L. T. N. S. 310. Upon an information under 5 Geo. 4, c. 83, s. 3, against a person able to maintain his wife and children, for neglecting and refusing to do so, the wife of the accused is not a competent witness against him. *Reeve v. Wood*, 5 B. & S. 364; 34 L. J. M. C. 15. See *Guardians of Cambridge v. Parr*, 30 L. J. M. C. 241; 10 C. B. 99; 32 & 33 Vic. c. 68. *Horley v. Rogers*, 2 El. & El. 674; 6 Jur. N. S. 605; 29 L. J. M. C. 140. Where a husband and wife are living separate, and the latter has property of her own, and becomes chargeable, the husband having no knowledge she was likely to become so:—*Held*, that he could not be convicted as a vagabond for having run away, whereby his wife became chargeable. *Sweeney v. Spooner*, 32 L. J. M. C. 82; 3 B. & S. 329; 7 L. J. 623.

[4] A. applied for a faculty for the exclusive use of a vault which had been constructed under the chancel of a church, but the sole entrance to which was in his own garden, on unconsecrated ground. It was ordered as a condition that before the faculty issues a sufficient space of ground around the aperture of the vault be consecrated. *Rugy v. Kingsmill*, 37 L. J. P. M. 13.

I. Sale of Lands and Tenements.

(A) *Rights, Duties, and Liabilities of Vendor*, p. 429.

(B) „ „ *Purchaser*, p. 429.

II. Of Personal Goods and Chattels.

(A) *Rights, Duties, and Liabilities of Vendor*, p. 429.

(B) „ „ *Purchaser*, p. 430.

III. Where Property passes as regards Vendor and Purchaser and other Parties, p. 431.

I. Sale of Lands and Tenements.

(A) *Rights, Duties, and Liabilities of Vendor.*[1]

(B) „ „ *Purchaser.*[2]

II. Of Personal Goods and Chattels.

(A) *Rights, Duties, and Liabilities of Vendor.*[3]

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[1] Where a vendee makes an unfounded objection to a deed as not properly stamped, the vendors are entitled to rescind the contract, but if they have failed to give a full and fair abstract within time, A. was entitled to damages, though of nominal amount. *Steer v. Crowley*, 14 C. B. N. S. 337; 32 L. J. C. P. 191. See *Wells v. Maxwell*, 32 L. J. Ch. 44; 8 L. T. N. S. 713; 9 Jur. N. S. 565; 8 L. T. N. S. 591—L. J. A vendee may rescind contract of sale on ground of substantial misdescription. *Robins v. Evans*, or *Evans v. Robins*, 2 H. & C. 410; 33 L. J. Ex. 68; 11 L. T. N. S. 211—Ex. Ch. See *Gardon v. Lee*, 34 L. J, Ex. 113; 3 H. & C. 651. Vendors are not bound to exercise their option to rescind a contract of sale immediately on receiving the objections to the title and requisitions (time not being the essence of the contract), they may do so within a reasonable time, which is a question for the jury. *St. Leonard's, Shoreditch (Vestry), v. Hughes*, 17 C. B. N. S. 137; 33 L. J. C. P. 349; 10 L. T. N. S. 723. See *Tilly v. Thomas*, 3 L. R. Ch. 61. When instead of a deposit, the defendant gave an I O U, which he never paid, and he afterwards refused to fulfil the agreement to purchase the goodwill of a public-house:—*Held*, that the plaintiff was entitled to recover the amount as a forfeited deposit. *Hinton v. Sparks*, 37 L. J. C. P. 81; 3 L. R. 161.

[2] Where there is no contract, or no contract which can be enforced, a purchaser is entitled to a return of his deposit. *Casson v. Roberts*, 31 Beav. 613; 32 L. J. Ch. 105, 7 L. T. N. S. 588. Where property was represented as standing on a vein of anthracite coal, the doctrine of caveat emptor applies, and it is the business of the purchaser to inquire as to the extent to which the coal has already been worked. *Colby v. Gadsden*, 34 Beav. 416. Although, where a written contract for the purchase of land states, with sufficient precision the subject-matter and the price, the law will imply that the whole interest of the vendor was contracted for; yet, if there is any expression in the contract inconsistent with such an implication the court will not decree specific performance. *Dolling v. Evans*, 36 L. J. 474. When a vendor is not in a condition to perform his contract, the purchaser may not only recover back his deposit, but the expense he has incurred in and about the purchase. *Claydon v. Green*, 3 L. R. C. P. 511; 37 L. J. C. P. 226. He cannot, however, recover damages for the loss of the profit that he would have derived from the purchase, where the vendor has not been guilty of at least some culpable default. *Sikes v. Wild*, 32 L. J. Q. B. 375; 8 L. T. N. S. 642—Ex. Ch.; 4 B. & S. 421. But where the breach of contract arises not from inability to make a good title, but from the vendor's refusal to take the necessary steps to give the plaintiff possession pursuant to the contract, the plaintiff could recover not only the deposit and expenses of investigating the title, but also damages for loss of his bargain, which would be the profit he could have made on a re-sale. *Engel v. Fitch*, 3 L. R. Q. B. 314; 37 L. J. 145. Where a purchaser accepts the title, he is only bound to the extent to which he has been made cognizant of it. *Bousfield v. Hodges*, 33 Beav. 90.

[3] By a memorandum of agreement in writing, A. agreed to purchase from B. certain land, with the coals and minerals thereunder; and in the same memorandum B. agreed to purchase from A. all coal that he might from time to time require, at the fair market rate. These are concurrent stipulations, and A., having failed to purchase the land from B., cannot sue B. for not buying from him the coal he requires. *Bankart v. Bowers*, 1 L. R. C. P. 484. A. received an order from a correspondent at Bremen to purchase for him bar-iron of a description known there as S. and H. crown iron. Upon inquiry, he found that the firm of S. & H., whose mark that was, had ceased to exist, and had been succeeded by a firm of H. & Co. The owner was described

in the bought and sold notes as "S. & H. (crown) common bars." When tendered, it was found to bear the mark of the new firm, "H. & Co.," with a crown, and was rejected by A. In an action for refusing to accept the iron, the jury found that the mark "S. & H." was not a material part of the bargain, and that the article tendered was substantially what A. bargained for:—*Held*, that construing the contract by the surrounding circumstances, the mark "S. & H." might be rejected as *falsa demonstratio*, and was complied with by the tender of iron marked "H. & Co." *Hopkins v. Hitchcock*, 14 C. B. N. S. 65; 32 L. J. C. P. 154. The plaintiff contracted with the defendant to supply him with 1000 pieces of English oak scantling. The plaintiff never sent any sample, but delivered a quantity of oak blocks, some of which did not accord with the contract, and were rejected. The defendant offered to pay for the good that suited him, if the plaintiff would send an invoice of it, and take away the rejected part. This not being complied with, the defendant afterwards withdrew this offer, and rejected the blocks. Subsequently the plaintiff sent in a new invoice, abating for the bad blocks, which the defendant returned, and declined further negotiations:—*Held*, that the original contract was not performed, and there was no substituted contract, and plaintiff was not entitled to recover. *Holmes v. Morris*, 9 L. T. N. S. 393—Exch. Where goods to arrive are sold by sample, the ship and the marks being stated, the sale-note containing the provision "should the quality prove inferior to the guarantee, a fair allowance to be made," and the sample was a distinctive species, but the bulk turned out to be a different species:—*Held*, the property did not pass by the sale, it being a condition precedent that the bulk was of the same species as the sample, and that the buyer was not bound to accept. *Azemar v. Casella*, 2 L. R. C. P. 431; 36 L. J. 124. Goods purchased to be taken by the purchaser from a quay is not a condition precedent, but an independent stipulation. *Neill v. Whitworth*, 35 L. J. C. P. 304. Anyone buying a chattel for special and extraordinary purposes unknown to the vendor, though he cannot upon breach of the contract to deliver it at the appointed time recover as damages the amount lost by the failure of his design, is still entitled to recover what he might have made if he had been able to use the chattel for the ordinary and customary purposes for which it is adapted. *Cory v. the Thames Ironworks Co. (Limited)*, 37 L. J. Q. B. 68.

[1] Where a person sells goods in his shop or warehouse, and gives an invoice, nothing being said about the ownership of them, and they turn out to be stolen, and are seized by the true owner, the purchaser can recover back the purchase-money from the vendor, as the latter may be taken to have by implication warranted that he is the owner. *Eichholtz v. Bannister*, 13 W. R. 96—C. P. If after the sale of a chattel, but before actual delivery, the vendor resells the property while the purchaser is in default, the resale will not authorise the purchaser to consider the contract rescinded, so as to entitle him to recover back any deposit of the price, or to resist paying any balance of it which may be still due. *A fortiori*, where there has been a delivery, and the vendor takes it out of the possession of the purchaser, and resells it. Where the resale is wrongful, the purchaser's remedy is by an action of trover. *Martindale v. Smith* (1 Q. B. 389) commented on. *Page*, App. *v. Cowasjee*, Resp., 12 Jur. N. S. 361, Priv. C.; 14 L. T. N. S. 176. The plaintiffs sold to the defendants goods to be paid for by cash or "approved banker's bills." The defendants paid for them by an "approved banker's bill," which was dishonoured on presentment for acceptance. They were not parties to the bill, and received no notice of dishonour. In an action against them for the price of the goods:—*Held*, that the defendants' liability was not more extensive than it would have been if they had indorsed the bill, and that they were therefore discharged, not having received due notice of dishonour. *Smith v. Mercer*, 3 L. R. Exch. 51; 37 L. J. Exch. 24; 17 L. T. N. S. 317. A. contracted to sell to B. a specific cargo of wheat, and which was all on board at the date of the contract:—*Held*, not necessarily to entitle the buyer to rescind the contract, on its turning out that all the wheat was not shipped before the bill of lading was given. *Gattorno v. Adams*, 12 C. B. N. S. 566. A. purchased at an auction, under a distress for poor-rates, a boiler set in brickwork. A. immediately afterwards sold it to B. at an advanced price, and received the purchase-money. Some days afterwards, upon B. going to remove the boiler, he was refused permission, on the ground that the distress had been wrongful, the boiler being the property of a mortgagee:—*Held*, that B. was not entitled to recover back the price, and that the jury were not justified in finding a warranty. *Baqueley v. Hawley*, 2 L. R. C. P. 625. The plaintiff having sent horses to a licensed horse-dealer for sale in the horse-dealer's own name, the dealer sold the horses, in his own name, to the defendant. The plaintiff, unknown to the defendant, revoked the dealer's authority to sell, or receive the price, and the defendant afterwards paid the dealer:—*Held*, that unless he had received notice of the revocation of authority (which he denied), the payment was good as against the plaintiff. *Curlewis v. Birkbeck*, 3 F. & F. 894. A plea that the bulk of goods supplied did not agree with the sample, and were of less value, and that as soon as the defendants discovered this they gave notice to the plaintiffs of their refusal to be bound by the contract:—*Held*, good, as the contract had been put an end to by the default of the plaintiffs, and it would be useless for

III. When Property passes as regards Vendor and Purchaser and other Persons.[1]

VENUE.[2] 6 Abr. 624.

VERDICT.[3] 6 Abr. 625.

VESTRY.[4] 6 Abr. 626. See *ante*, Churchwardens; Overseers; Parish; and *see* 1 & 2 Wm. 4, c. 60; 16 Vic. c. 65.

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a court of equity to reform it. *Borrowman v. Rossel*, 10 Jur. N. S. 679; 33 L. J. C. P. 111. See *Rogers v. Hadley*, 9 Jur. N. S. 898; 32 L. J. Exch. 241; 9 L. T. N. S. 292.

[1] If, upon a contract for the sale of goods, anything remains to be done by the buyer, such as weighing, measuring, or testing the goods, if it appears by the terms of the contract that it was the intention of the parties that the property should pass to the buyer, it will pass though he has not done the act. *Turley v. Bates*, 2 H. & C. 200; 33 L. J. Exch. 43; 10 L. T. N. S. 35. See *Calcutta Navigation v. De Mattos*, 32 L. J. Q. B. 322. Where on a contract of sale of a portion of a large quantity of goods in the warehouse of the vendor, the vendee has resold the goods to a third person, whose right to them the vendor has recognised, he cannot afterwards dispute the title of such third person, although the specific goods have never been appropriated to him. *Woodley v. Coventry*, 2 H. & C. 164; 32 L. J. Ex. 185. A sale of a given number of bales out of a larger number, does not vest the property in the vendee, until there has been a specific appropriation by the vendor, assented to by the vendee or by his agent. *Campbell v. Mersey Docks*, 14 C. B. N. S. 412; 8 L. T. N. S. 245. No property passes where a vendor is deceived as to the real purchaser. *Hardman v. Booth*, 1 H. & C. 803; 32 L. J. Exch. 105; 7 L. T. N. S. 638.

[2] The proper venue for every action is the county where the cause of action arose, and it is not a sufficient reason for changing it that either party has retained the most eminent counsel on the circuit, unless it is done oppressively. *Curtis v. Lewis*, 12 W. R. 951—Q. B. Twenty witnesses and a horse on one side against ten on the other:—*Held*, not such a preponderance of "inconvenience" as to induce the court to bring back the venue from the place where the cause of action (if any) arose. *Blackman v. Bainton*, 15 Com. R. Rep. N. S. 432. The circumstance of a plaintiff being an officer in the navy, and hoping to be shortly appointed to a ship, which would disable him from attending at the trial if the venue were changed, is sufficient to induce the court to retain the venue where laid, although all the defendant's witnesses resided at the place to which it was sought to change it. *Channon v. Parkhouse*, 13 C. B. N. S. 341. An action for damage arising from a public nuisance on a highway is a local action; and if there is no local description in the body of the declaration, the county in the margin must be taken to be repeated in the declaration; and on a plea traversing the existence of the highway, proof that the highway is in another county is a fatal variance. *Richardson v. Locklin*, 34 L. J. Rep. (N. S.) Q. B. 225; 6 B. & S. 777. The Attorney-General for the Prince of Wales, it seems, has the power in transacting actions of retaining the venue in the Duchy of Cornwall. *Atty.-Gen. v. Crossman*, 1 L. R. Ex. 381.

[3] Where, at the trial of a cause, leave is given to move to enter a verdict, the court to have power to draw such inferences from the facts as a jury might. The Exchequer Chamber, upon appeal, is bound to draw such inferences from the facts as the court below ought to have drawn. *Allen v. Smith*, 11 W. R. 440—Ex. Ch. Where leave is reserved to the defendant at the trial to move to enter a nonsuit, the court has power to enter a verdict for the defendant on some issues, and for the plaintiff on others. *Winterbottom v. Derby*, 36 L. J. Ex. 194.

[4] At a vestry meeting, after a show of hands a poll was demanded, and the time agreed upon, viz. upon two consecutive days between twelve and four, and six and eight o'clock in the evening. The voting was slack on the first day, but on the second a rush was made, out of the whole number of 1100 ratepayers, 300 or 400 were unable to vote:—*Held*, that the time appointed was reasonable, and that due diligence had not been used. *Reg. v. Sutton, Lancashire (Overseers)*, 11 L. T. N. S. 487—B. C. By 58 Geo. 3, c. 69, s. 3, every inhabitant present at a vestry, who shall in such last rate have been assessed at a certain amount, held by him in his individual capacity, and also for property held by him as executor, the two may be lumped together so as to give him an additional vote. *R. v. Kirby*, 31 L. J. Q. B. 3; 1 Best & S. 647. By 33 Geo. 3, c. 162, and 3 Wm. 4, c. 33, certain provisions were made for assessing and collecting poor and other rates in the parish of St. George, Camberwell. After the passing of the act, certain districts were taken out of the parish:—*Held*, that in the absence of any enactment to the contrary, the provisions contained in the above statutes would still apply, so far as the rates in the mother parish were concerned. *R. v. Roberts*, 32 L. J. (N. S.) M. C. 153; 3 B. & S. 495.

VEXATIOUS Indictments for Misdemeanors.[1] 6 Abr. 629. See *ante*, Misdemeanors, p. 326.

VOID, or Voidable. As to a Deed being, *see Hughes v. Palmer*, 19 C. B. 393; 34 L. J. C. P. 279; 12 L. T. 635.

VOLUNTEERS. *See* 26 & 27 Vic. c. 65.

W.

WAGER. 6 Abr. 632. See *ante*, Gaming. As to Wagering in any street, highway, or other open public place, *see* 31 & 32 Vic. c. 52. Horse-Racing; Insurance, Life; Stakeholder, *see* 8 & 9 Vic. c. 109.

WAGES. 6 Abr. 632. See *ante*, Master and Servant.

WAIVER.[2]

WAREHOUSE. As to depositing dangerous goods in, *see* 29 & 30 Vic. c. 69.

WARRANT.[3] 6 Abr. 632.

WARRANT of Attorney.[4] 6 Abr. 635.

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[1] By 22 & 23 Vic. c. 17, s. 1, no bill of indictment for certain specified offences shall be presented or found by any grand jury, unless some one of certain conditions have been performed:—*Held*, that it is not necessary that the performance of any of such conditions should be averred on the face of the indictment, or proved before the petty jury. *Knowlden v. the Queen*, 33 L. J. M. C. 219; 5 B. & S. 532. It is in the discretion of the justice under that statute whether he will take recognizances where the charge or complaint is doubtful as to its being an indictable offence. *Ex parte Wason*, 38 L. J. Q. B. 302.

[2] A waiver of a contract must be a direct, intentional, and not an inferred act. *Darnley v. London and Chatham R. C.* 36 L. J. C. 404 (H. L.) If a party to a reference objects that the arbitrators are entering upon the consideration of a matter not referred to them, and protests against it, and the arbitrators go into the question, and the party, still under protest, continues to attend before the arbitrators and cross-examines the witnesses, he does not waive his objection, nor is he estopped from saying that the arbitrators have exceeded their authority. *Davies v. Price*, 34 L. J. Q. B. 8. *Ringland v. Lowndes*, 33 L. J. C. P. 337—Ex. Ch.

[3] A search-warrant by which a party is arrested, must be founded on an information which discloses a charge of felony, or a statement of facts from which it may be inferred that a felony has been committed. *M'Donald v. Bulwer*, 13 Ir. Com. Law Rep. 549. A warrant to hold to bail was headed "J. J. P. complainant: W. K. defendant;" and addressed to the head constable; and in the body of it commanded the constable to lodge the said —— in gaol:—*Held*, the omission in the body of the warrant of the name of the party to be taken under it vitiated the warrant. *Hodgens v. Poe*, 2 Ir. R. C. L. 52—Ex. Ch.

[4] An action will not lie upon the implied contract contained in the defeazance of a warrant of attorney. *Sherborn v. Huntingtower (Lord)*, 13 C. B. N. S. 742. A warrant of attorney may be voidable as against assignees under 1 & 2 Vic. c. 110, s. 59, but does not enable them to treat the seizing and selling of goods as a conversion in an action of trover against the execution creditor. *Young v. Billiter*, 8 H. & L. C. 682; 30 L. J. Q. B. 163. By 32 & 33 Vic. c. 62, s. 24, warrants of attorneys and cognovits must be executed in the presence of an attorney; and by s. 25 when not so executed they are invalid; and by s. 26 they must be filed within 21 days after execution; and by s. 27 a judge's order to interrupt judgment must be so filed.

WARRANTY. 6 Abr. 637. See *ante*, Deceit; Horses; Vendors and Purchasers.

I. By Implication.[1]

II. Express.[2]

III. Representations, when amounting to.[3]

IV. Remedies in.[4] See *ante*, Damages, p. 161.

WATERCOURSE. 6 Abr. 639. See *ante*, Drainage; Easements.

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[1] Where goods are sold in a shop by a shopkeeper in the ordinary course of his business, he is understood to affirm that he is the owner, and to warrant the title; and therefore, in case of defect of title and of the purchaser being deprived of them by the true owner claiming them, the money paid for the purchase may be recovered back from the shopkeeper. *Eichholz v. Bannister*, 34 L. J. C. P. 105; 17 C. B. N. S. 708. Under a contract to supply goods of a specified description, which the buyer has no opportunity of inspecting, they must not only, in fact, answer the specific description, but must be saleable or merchantable under that description. *Jones v. Just*, 3 L. R. Q. B. 197; 37 L. J. Q. B. 89; 18 L. T. N. S. 208. The maxim of caveat emptor does not apply where the buyer has no opportunity of inspection. *Ib.* When a contract is for merchantable goods, and the sale by sample, which represents to the buyer a merchantable article and discloses no defect, there is still an implied warranty of their being merchantable, in respect of all such matters as cannot be judged of by the sample. *Mody v. Gregson*, 38 L. J. Ex. 12; 4 L. R. Ex. 49; 19 L. T. 458, Ex. Ch. *Azemar v. Casella*, Ex. Ch. 2 L. R. C. P. 677; 36 L. J. 263. Where goods are sold under a certain denomination, the buyer is entitled to have such goods as are commercially known under the denomination, though he may have bought after inspection of the bulk, and without warranty. *Josling v. Kingsford*, 13 C. B. N. S. 447; 32 L. J. C. P. 94; 7 L. T. N. S. 700. *Chalmers v. Harding*, 17 L. J. Ex. 571. *Page v. Cowasjee Eduljee*, 1 L. R. P. C. App. 127. There is no implied warranty that an article exposed for sale as human food is fit for that purpose; nor, in the absence of any fraud on the part of the seller, will an action on the case for deceit lie against him, nor an action to recover the price by a purchaser who, believing it to be fit for human food, has purchased it to sell to retail customers. *Emmerton v. Matthews*, 31 L. J. R. N. S. Ex. 139; 7 H. & N. 586. And see *George v. Skivington*, *ante*, p. 321.

[2] The plaintiff's foreman went to the defendant's shop and inspected nine soap frames. The frames were in separate pieces, not put together. The foreman agreed to buy six. The plaintiff the next day wrote to the defendant, "Please send to the above address the six new iron frames which were seen yesterday." The defendant delivered the frames, with an invoice, "Six new soap frames, and bolts and screws complete and perfect." They were found to be cracked, broken, and unfit for making soap:—*Held*, that this was not a sale of a specific chattel at the time of inspection; that the invoice sent with the frames was an express warranty that the frames were fit for use. *Mallun v. Radloff*, 10 Jur. N. S. 1132; 11 L. T. N. S. 381, C. P.; 17 C. B. 588. In an action by a tradesman against the manufacturers of an iron safe for the breach of a warranty that it was strong enough to resist all attempts that might be thereafter made to force it open, it was *held* to be absolute warranty of perfect security for all times to come. *Walker v. Milner*, 4 F. & F. 745.

[3] If a person purchases an article which is to be manufactured for him, and the manufacturer delivers it with a patent defect, if the purchaser has had an opportunity of inspecting it, but has neglected to do so, the manufacturer is not guilty of fraud in not pointing out the defect. *Horsfall v. Thomas*, 1 H. & C. 90.

[4] Where representations are contained in letters which constitute a contract of sale, evidence is admissible of the surrounding circumstances for the purpose of showing that no warranty was contemplated. *Stuckey v. Baily*, 1 H. & C. 405. Upon a sale of two oxen the plaintiff told the defendant that if there was the least fear of disease he would not have them, as he wanted to put them with his other stock, the defendant replied that they were quite sound and free from disease. The plaintiff purchased them, and placed them with his other cattle. In a few days the two died of the rinderpest, which they had at the time of sale, and which disease they communicated to the other cattle:—*Held*, according to the rule in *Hadley v. Baxendale*, that the plaintiff was entitled to recover for the loss not only of the two oxen purchased, but for that of the other beasts. *Knowles v. Nunns*, 14 L. T. N. S. 593, Q. B.

I. As to Natural and Artificial Watercourses, p. 434.
II. As to Surface and Subterranean Water, p. 434.
III. Right to discharge Water on another's Land, p. 434.
IV. Remedies for obstructing and Injuries to, p. 435.

I. As to Natural and Artificial Watercourses.[1]

II. As to Surface and Subterranean Water.[2]

III. Right to discharge Water on another's Land.[3]

[1] Water passing from the opening of the lock of a canal does not constitute a watercourse within 2 & 3 Will. 4, c. 71, s. 2. *Staffordshire Canal v. Birmingham Canal*, 1 L. R. H. L. 254; 35 L. J. Ch. 757. A riparian proprietor has a right, by means of waterwheels and machinery erected by him for that purpose, to pump up water from a natural stream flowing past his land to a reservoir, in a reasonable quantity, with reference to the size of the stream and the rights of his neighbour; but he has no right to take more water by means of the wheels and machinery than he would have a right to take otherwise. *Norbury* (*Lord*) *v. Kitchin*, 9 Jur. N. S. 132; 7 L. T. N. S. 685, Ex. A watercourse, though artificial, may have been originally made under such circumstances, and have been so used, as to give all the rights that the riparian proprietors would have had if it had been a natural stream. *Sutcliffe v. Booth*, 32 L. J. Q. B. 136. A right to water flowing in a watercourse is not to be established under 2 & 3 W. 4, c. 71, s. 2 by possession and enjoyment for more than twenty years, unless the enjoyment is shown to have been under a claim of right thereto. *Gaved v. Martyn*, C. P.; 34 L. J. 353. The state of premises, and the mode in which the have been used at the time when granted, may confer an implied grant of the right to use drain and stream. *Hall v. Lund*, 1 H. & C. 676; 32 L. J. Ex. 113; 7 L. T. N. S. 692. *Wardle v. Brocklehurst*, 1 El. & El. 1058, Ex. Ch. The right of a riparian proprietor to take water cannot be granted away in gross, so as to give the grantee a right to an action against a wrong-doer. *Stockport Waterworks v. Potter*, 10 Jur. 1005; 10 L. T. 748—Ex. A right to take water cannot be established by a user of twenty years, as against a superior riparian proprietor. *Ib.* The rights he has are entirely derived from the possession of land abutting on the river. *Ib.* If he grants away any portion of his land so abutting, the grantee becomes a riparian proprietor, and has similar rights. *Ib.* The soil of the *alveus* is not the common property of the respective owners on the opposite sides of a river; the shares of each belong to him in severalty, and extends *usque ad medium filum aquæ*. A fence or bulwark on the bank is allowable, but the *alveus* is sacred.

[2] Part of the watershed of the Mendip Hills is drained by means of "swallets," which are natural fissures in the rock, having each an underground passage for water, with an outlet at the foot of the hills. The defendant discharged water which had been used by him on the hills, in a foul and polluted state, which flowed into a mill-stream of the plaintiffs, contaminating the same, and rendering it unfit for his purposes: — *Held*, that Chasemore *v.* Richards (2 H. & N. 168; 7 H. L. 349; B. & S. 229) did not apply, and that the plaintiff was entitled to recover. *Hodgkinson v. Ennor*, 9 Jur. N. S. 1152; 32 L. J. Q. B. 231; 8 L. T. N. S. 451. See *Reg. v. Metropolitan Board of Works*, 9 Jur. N. S. 1008; 32 L. J. Q. B. 105; 8 L. T. N. S. 238.

[3] A mill had been constantly worked since 1804 by water taken from a natural stream by means of a weir and goit. The goit was made through the land of B., a riparian proprietor, under an agreement (not under seal) by virtue of which he was to receive an annual payment for allowing the water to pass that way to the mill. The occupier of the mill brought an action against a riparian proprietor above B.'s land for drawing off the water of the stream at a point above the weir:—*Held*, maintainable. *Nuttall v. Bracewell*, 2 L. R. Ex. 1; 36 L. J. Ex. 1. A company undertaking for their own profit to maintain a channel for carrying off water, and neglecting to do so effectually, is responsible for damage done to the adjoining land by reason of the banks giving way after an unusual rainfall. *Harrison v. Great Northern Railway Company*, 33 L. J. Ex. 266; 10 L. T. N. S. 621. A person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and, if he does not do so, is *primâ facie* answerable for all the damage which is the natural consequence of its escape. *Fletcher v. Rylands*, 4 H. & C. 263, in error; 1 L. R. Ex. 265; 35 L. J. 154, Ex.; 14 L. T. 523.

IV. Remedies for obstructing and Injuries to [1]

WASTE.[2] 6 Abr. 637. *See ante*, Commons, p. 110.

WATERMAN and Lighterman.[3] *See* 22 & 23 Vic. c. 133

WATERWORKS. 6 Abr. 641. *See* 10 Vic. c. 17. Consolidation Act, 26 & 27 *ib.* c. 93.

WAY. 6 Abr. 643. *See* also *ante*, Easement; Highways; Turnpike-roads.

I. By Necessity, p. 435.

II. Implied or Express Grant, p. 436.

III. By Statute, p. 436.

IV. Extinguishment of, p. 436.

V. Pleadings, Evidence, and Proceedings connected with, p. 436.

I. By Necessity.[4]

[1] When an owner of land, without wilfulness or negligence, uses his land in the ordinary manner of its use, though mischief should thereby be occasioned to his neighbour, he will not be liable in damages. *Rylands v. Fletcher*, 3 L. R. H. L. Cas. 330; 37 L. J. Ex. 161. The defendant having erected pumps and conduit-pipes to conduct the water of a stream across a hill into a reservoir, to await the use of a house built by him on property acquired by him subsequently to his riparian property:—*Held*, that the judge properly left to the jury to find whether his use of the stream was reasonable under all the circumstances. *Semble*, that the doctrine, as laid down in Minor *v.* Gilmore (12 Moore, P. C. 156), that a riparian proprietor has a right to the reasonable use of the water, without regard to the effect on proprietors lower down, is incorrect. *Ib. Norbury (Lord) v. Kitchin*, 9 Jur. N. S. 132; 7 L. T. N. S. 685—Ex. In a demise of lands for building purposes, there was reserved "the free running of water and soil coming from any other buildings and lands contiguous to the premises hereby demised, in and through the sewers and watercourses, "made or to be made," on the premises:—*Held*, this reservation would not include a right to send the refuse water from a tan-pit subsequently formed, but only water and such matters as are the product of the ordinary use of land for habitation, such as night-soil and sewage. *Chadwick v. Marsden*, 2 L. R. Ex. 285; 36 L. J. 177. The plaintiffs obtained leave, from an agent of the owner of land, to make a watercourse over it. The owner of the land subsequently leased it to the defendant, who, as well as the agent of the owner, gave the plaintiffs notice to discontinue the watercourse over their land. The plaintiffs not discontinuing it, the defendant stopped it at the place where it left the plaintiffs' premises and came on to the land of the occupier, which caused the plaintiffs damage:—*Held*, that the lease operated as a revocation of the license to continue the watercourse. *Roberts v. Rose*, 33 L. J. Ex. 241; 10 L. T. N. S. 624. The abstraction of water may give a right of action, without proof of actual damage or inconvenience; or the continued abstraction may be evidence against the district, and, among others, against the defendant for neglect. *Harrop v. Hird*, 3 L. J. N. 241.

[2] The tendency of the authorities upon the subject of injury to real property is to break down the old distinction that existed between waste and trespass. *Lowndes v. Bettle*, 33 L. J. Ch. 451. Meadow land, which has not been broken up during twenty years which immediately preceded the execution of a lease, is, as between the lessor and the lessee, ancient meadow, the breaking up of which during the term amounts to a breach of the lessee's covenant not to commit waste. *Murphy v. Daly*, 13 Ir. C. L. R. 239, Ex. Ch.

[3] A person found plying a barge for hire on the Thames, within the limits of stat. 22 & 23 Vic. c. 133, and not being licensed, incurs a penalty under sect. 54, though the barge started from a place beyond those limits. *Doick v. Phelps*, 3 E. & E. 244.

[4] Where an owner of a farm divided it by his will into two portions, devising them to

II. Implied or Express Grant.[1]

III. By Statute.[2]

IV. Extinguishment of.[3]

V. Pleadings, Evidence, and Proceedings connected with.[4]

A. and B. respectively, and in order to reach the portion of B. it was necessary that he should have a way over the property of A., and the devisor had used a way in a certain direction over that property:—*Held*, a right of way passed to B. by the devise. *Pearson v. Spencer*, 3 B. & S. 761—Ex. Ch.; 8 L. T. 166. An owner of a plot of ground built upon it a house facing the highway, and at the back of the garden of the house he built a cottage. The access to the cottage was from the highway down a passage by the side of the house and its garden wall. In 1851, the owner conveyed the cottage in fee to B., by the dimensions and abuttals delineated in a plan, "be the same more or less:"—*Held*, no right of way over the passage passed either by grant of or necessity. *Dodd v. Burchell*, 1 H. & C. 113.

[1] A right of way appurtenant to land passes to the tenant by a parol demise of the land, though nothing is said about it at the time of the demise. *Skull v. Glenister*, 16 C. B. N. S. 81; 33 L. J. C. P. 185; 9 L. T. N. S. 763; 11 W. R. 368; 7 L. T. N. S. 826—C. P. A parish may possess, as private property, an exclusive right of way, but it must be by express grant from the owner of the land; and no such right can be presumed to have arisen from dedication, inasmuch as there can be no such thing as a dedication to a part of the public. *Bermondsey (Vestry) v. Brown*, 13 L. T. N. S. 574—R. C. A right of way in the absence of express words does not pass under the deed of partition, it not being an apparent and a continuous easement necessarily passing upon the severance of the property, as incident to the separate enjoyment of the portion severed. *Worthington v. Grinson*, 2 El. & El. 618; 6 Jur. N. S. 1053; 29 L. J. Q. B. 116. *Pearson v. Spencer*, 1 B. & S. 571.

[2] In an enclosure act general words were used reserving to the lord of the manor, his successors, &c., rights of way over the lands for carrying coal, &c., to be gotten thereout, "or out of any other lands or grounds whatsoever;"—*Held*, on the construction of the act, and the decision on the same point in *Midgley v. Richardson* (14 Mee. & Wel. 595), that this did not confer on the grantee a power to grant a right of way to persons to carry coals, &c., over the land raised from mines not his property. *Hedley v. Fenwick*, Ex. Ch. 11 L. J. N. S. 571.

[3] Where a person is the owner of two closes, A. and B., and for the purpose of more conveniently occupying both the closes, he makes a road across A. to close B., this *is not a right of way*, but a mere exercise of his common law right, and if he sell close B. and convey it, together with all fences, ways, &c., no right of way over A. passes, where a way of necessity does not arise. It would be otherwise had the way existed prior to the unity of possession of the two closes as then upon severance, and such a conveyance the old right of way would have revived. *Thomson v. Waterlow*, 6 L. R. Eq. 36; 37 L. J. 495. See *Langley v. Hammond*, 3 L. R. Ex. 161; 37 L. J. 118; 18 L. T. 858. A lease, dated June, 1848, and made in pursuance of an agreement of 1802, demised premises, "with the rights and appurtenances thereunto belonging or in anywise appertaining." Evidence was given of the enjoyment of way, by the occupiers of the premises, over the premises of the lessor, under whom the defendant claimed, for more than forty years, and that it was essential to the enjoyment of the premises:—*Held*, no unity of possession of the dominant and servient tenements in the lessor, upon the grant of the lease of 1848, to extinguish the right of way. *Kavanagh v. Coal Mining Company of Ireland*, 14 Ir. Com. Law Rep. 82—Q. B.; and the way, being essential to the beneficial enjoyment of the premises, passed under the word appurtenances. *Ib.*

[4] To support a plea of an immemorial private way, there must be evidence of a user for at least twenty years as of right, and if during part of the time, and for more than twenty years before the alleged trespasses, and there has been a user of the way less convenient, it will be for the jury to say whether the alleged way was ever acquired as of right, or whether it was abandoned; that is, if it was a subsisting right at the time of the alleged trespasses. *Darling v. Clue*, 4 F. & F. 329. As to revoking a license to use a way given by an agreement, see *Hyde v. Graham*, 1 H. & C. 593. A. was possessed of a close, the only way to which was along a lane between two other closes, one of which belonged to A., and the other to B. In the absence of any direct evidence of ownership, the jury was told that they might presume the soil of the lane to belong in moieties, and that, in respect of the close at the end of the lane, A. had a mere easement:—*Held*, a proper direction. *Smith v. Howden*, 14 C. B. N. S. 398. *Brownserd v. Harris*, 3 F. & F. 853. When a public way is obstructed, an individual cannot bring an action against the obstructor, unless he has sustained some special damage apart from that sustained by the rest of the public, and his being obliged to turn back and proceed by a less direct route, or to remove the obstruction, will not be sufficient. *Winterbottom v. Derby*,

WEIGHTS and Measures.[1] 6 Abr. 644. 4 & 5 Wm. 4, c. 49; 5 & 6 Wm. 4, c. 63; 22 & 23 Vic. c. 56; am., 25 & 26 Vic. c. 76; (metric system 27 & 28 Vic. c. 117; am. 29 & 30 Vic. c. 82).

WELLS.[2]

WHARFINGER. 6 Abr. 645. *See ante*, Bailment; Lien; Negligence.

WHIPPING. Punishment of Persons Guilty of Personal Violence. 26 & 27 Vic. c. 44.

WILLS. 6 Abr. 646. 7 Vic. c. 26; 15 & 16 *ib.* c. 24; 24 & 25 *ib.* cc. 114, 121. *See ante*, Administration; Donatio Causâ Mortis; Executors and Administrators; Legacy; Probate.

I. Capacity or Incapacity to Make, p. 438.

II. Locality or Place of Making, p. 438.

III. Formal Requisites.

(A) *Of the Signature and Acknowledgment of the Testator*, p. 438.

(B) *Of the Attestation Clause and Attesting Witnesses*, p. 438.

IV. As to Soldiers' and Seamen's Wills, p. 439.

V. Revoking, Cancelling, or Altering, p. 439.

VI. Republication and Revival, p. 439.

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36 L. J. Ex. 10. *See* 16 C. B. 222. Where there has been an interruption of enjoyment, the question whether such interruption has been acquiesced in or not for one year, as specified in sect. 4, is to be left to the jury and decided by them. *Bennison v. Cartwright*, 33 L. J. Q. B. 137; 10 L. T. N. S. 266. Excess of user is a question of fact not of law. *Williams v. James*, 36 L. J. C. P. 256. It seems that where one grants to another a right of way, the latter must bear the expense of making it available, by forming the road, keeping it in repair, and erecting the necessary fences. *Ingram v. Morecroft*, 33 Beav. 49.

[1] At a station of a railway was a weighing machine working by a spring, and having a dial plate and index finger, with figures used for weighing parcels and passengers' excess luggage. The machine stood at 4 lbs. instead of zero:—*Held*, the company properly convicted of having a weighing machine found to be incorrect and unjust, under 5 & 6 Wm. 4, c. 63, s. 28. *Great Western Railway Company v. Bailie*, 5 B. & S. 928; 34 L. J. M. C. 31—Q. B. As to a machine liable to variation from atmospheric and other causes, see *London and N. W. R. Co. v. Richards*, 2 B. & S. 326. An earthenware vessel, although not stamped as a measure, if ordinarily used as containing a definite amount of imperial measure, if found unjust, is liable to forfeiture, and the person using it to a penalty. *Reg. v. Aulton*, 3 E. & E. 568. A contrivance was used for adjusting a weighing machine, which without it was incorrect. It was not a part of the machine, but detached and capable of being easily removed:—*Held*, that the person in whose possession the weighing machine was found was properly convicted under 5 & 6 Wm. 4, c. 63, s. 28, of having in his possession unjust scales. *Carr v. Stringer*, 16 W. R. 859; 18 L. T. N. S. 399; 3 L. R. Q. B. 433. Bread, which at the time of passing 6 & 7 Wm. 4, c. 37, s. 4, was usually sold under the denomination of fancy bread, but which at the present time had ceased to be sold under that denomination, must be taken as ordinary bread and subject as such to be weighed according to the statute. *Reg. v. Wood*, 38 L. J. M. C. 144; and see *Jones v. Huxtable*, 36 L. J. M. C. 122.

[2] The defendant sank a well on his own land, which adjoined some land of the plaintiff, on which the latter had built a house. The well was subsequently filled up with loose earth, which in time subsided towards the plaintiff's land, causing the foundation of the kitchen wall of his house to give way:—*Held*, that the excavation of the well was an exercise of a lawful act of ownership, and as the jury found there was no appreciable damage done to the plaintiff's land by the act, there was no actionable injury. *Smith v. Thackeray*, 1 L. R. C. P. 761; 35 L. J. C. P. 276; 14 L. T. N. S. 761.

[3] A wharfinger, who has agreed to hold goods under a delivery order, cannot resist an action for the conversion of those goods, on the ground that they had not been separated from the bulk, and that no property passed to the person who lodged the order. *Woodley v. Coventry*, 32 L. J. Ex. 185; 8 L. T. N. S. 249. See *Hunt v. Maniere*, 11 L. T 469.

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I. Capacity or Incapacity to Make.[1]
II. Locality or Place of Making.[2]
III. Formal Requisites.
(A) *Of the Signature and Acknowledgment of the Testator.*[3]
(B) *Of the Attestation Clause and Attesting Witnesses.*[4]

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[1] A will executed during coverture is not rendered valid by the death of the husband before the wife, there being no execution or republication of it. *Wollaston, in Goods of*, 12 W. R. 18—Prob. A pressure of whatever character, so exerted as to overpower the volition, without convincing the judgment, is a restraint under which no valid will can be made. *Hall v. Hall*, 37 L. J. Prob. 40; 17 L. T. N. S. 152; 1 L. R. P. & D. 481.

[2] The execution of a will under a power in an English settlement, by testator domiciled abroad to be according to the law of his domicil. *In the Goods of Hallyburton*, 35 L. J. 122, P. & M. A domiciled Portuguese by his will appointed A. and B. his executors in Portugal, and C. and D. his executors in England:—*Held*, that as one of the latter executors was resident in Portugal, the words "in England" and "in Portugal" were equivalent to "for England" and "for Portugal" respectively. *Velho (by his Attorney) v. Leite*, 33 L. J. P. & M. 107; 3 S. & T. 456. Testator being domiciled in Scotland, in anticipation of his marriage, which subsequently took place in Scotland, executed a deed of settlement, which he also intended should operate as his will. By the law of Scotland, such a document would not be revoked by the marriage. Testator became domiciled in England:—*Held*, as the settlement was valid by the law of domicil as a testamentary disposition, when the testator left the country, it continued valid notwithstanding the change of domicil. *In the Goods of Reid*, 35 L. J. P. & M. 43. See *in the Goods of D'Estève de Pradel*, 37 L. J. P. & M. 2.

[3] The testator's signature was written partly across the last line but one of the will, and entirely above the last line, though one letter touched the last line:—*Held*, it was signed at the foot or end thereof. *In the Goods of Woodley*, 33 L. J. Prob. M. & A. 154; 3 S. & T. 429. The deceased wrote his will on the first and third sides of a sheet of paper, leaving the second blank. The writing was continued so low down on the third side that sufficient space was not left for the signatures of the deceased and witnesses, which were written crossways on the second side:—*Held*, that the execution was valid. *In the Goods of Coombes*, 36 L. J. P. & M. 6. *In the Goods of Williams*, 35 L. J. P. & M. 2; 1 L. R. P. & D. 4. See *Hunt v. Hunt*, 35 L. J. P. & M. 135. Holograph will with full attestation clause, the signature of the testatrix being only in that clause. The evidence of both witnesses proved that after they had been called in to put their names to some paper they saw the testatrix write something, but they did not know what, and did not see her signature, blotting paper being placed over the writing:—*Held*, on the principle *omnia presumuntur rite esse acta*, the court must conclude that the testatrix wrote a name. *Smith v. Smith*, 1 L. R. P. & D. 143; 35 L. J. 65. See *Manger v. Le Gallois*, 1 L. R. P. C. 470; 30 L. J. P. C. 58. A., in the presence of a testator, and by his direction, impressed his usual signature by means of a stamp:—*Held*, duly signed. *Jenkyns v. Gaisford*, 32 L. J. Prob. 122; 3 S. & T. 93; 8 L. T. N. S. 517—Prob. Essential to validity, that the testator at the time of its execution should know and approve of its contents. *Hastilow v. Stobie*, 35 L. J. P. & M. C. 18.

[4] The signatures of the testator and the attesting witnesses were written on a separate piece of paper wafered to the foot of the will:—*Held*, the will was duly executed. *Cook v. Lambert*, 32 L. J. P. & M. 93; 3 S. & T. 46. An informal attestation clause, "signed by me in the presence of," and the witnesses identify the signatures, but have no recollection of the circumstances under

IV. As to Soldiers' and Seamen's Wills.[1]

V. Revoking, Cancelling, or Altering.[2]

VI. Republication and Revival.[3]

VII. Appointment of Executors.[4]

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which they signed, the presumption *omnia rite esse acta* will prevail. *In the Goods of Rees*, 34 L. J. P. & M. 56. The names of attesting witnesses, who were unable to write, were written by another person whilst they held the top of the pen:—*Held*, will duly attested. *In the Goods of Lewis*, 31 L. J. P. & M. 153; 2 S. & T. 153. A will pronounced against which contained a formal attestation clause, the evidence of the attesting witnesses being that they had not signed in each other's presence, and had not seen the testator sign, or his signature. *Croft v. Croft*, Prob. 34 L. J. N. S. 44. A testator, after he had written his name in the attestation clause, asked the witnesses to subscribe and attest the will, he then wrote his name underneath their signatures and said that they were witnesses to his will. The court held this as sufficient execution. *In the Goods of Casmore*, 38 L. J. M. & P. 54. A testator produced a folded paper, so that the witnesses could not see his signature or any writing upon it, but believed that they were signing his will:—*Held*, that it might be presumed that the signature of the testator was on the paper when the witnesses signed. *Beckett v. Howe*, *ib.* 1. See *Oliver v. Johns*, *ib.* 7.

[1] A will made in Africa, and commencing, "In the event of my death while serving in this horrid climate, I leave," &c., *held* not to be conditional on the death of the deceased happening in Africa. *In the Goods of Thorne*, 34 L. J. P. & M. 131; 4 S. & T. 36. The deceased, who was master of a trading vessel, in the course of a voyage wrote and forwarded by post a letter, some sentences of which were testamentary. The vessel was subsequently lost at sea:—*Held*, that such a letter, being in the handwriting of the deceased, sufficed. *In the Goods of Parker*, 2 S. & T. 375.

[2] A will disposing of the whole of the testator's property will act as a revocation of a will disposing of a part only of the property of the testator. *Moorhouse v. Lord*, 32 L. J. Ch. 295; 8 L. T. N. S. 212—H. L. A testamentary paper purporting to be a codicil to a will, but being substantially independent of it, is not necessarily revoked by the revocation of the will. *Ellice, In Goods of*, 33 L. J. Prob. 27. A testator made a will in 1851, and a codicil thereto in 1854. He burned the will in 1851, with the intention of revoking it, but not the codicil. The codicil was substantially independent of the will:—*Held*, the revocation of the will did not revoke the codicil. *Ib.* A will was partially revoked by erasures, and was afterwards republished:—*Held*, that the revocation was final, and not deliberative. *Ibbott v. Bell*, 34 Beav. 395. A conditional revocatory act by burning is not a revocation when the condition fails. *Powell v. Powell*, 35 L. J. M. & P. 100. A., a widow, under her marriage settlement, executed a will in favour of B., without having executed any fresh settlement:—*Held*, that she had a right to revoke the will so made by any of the methods prescribed by the Wills Act. *Hawkesley v. Barrow*, 35 L. J. P. & M. 67. A., by will made in 1853, gave all his real and personal estate to B. and appointed B. sole executor, and by a subsequent will, which contained no clause of revocation, he gave two houses to C., and appointed C. sole executor:—*Held*, that the latter will did not revoke the former, and that B. and C. were entitled to probate of both instruments. *Geaves v. Price*, 32 L. J. Prob. 113. H. executed a will by signing her name at the foot of the first five sheets, and at the end. The testimonium clause stated that she had done so. A codicil was also executed, which was written at the foot and on the back of the last sheet of the will. Subsequently the deceased cut off her signature at the bottom of the five sheets, and drew a pen through the name at the end, adding the words, "Cancelled, A. D. H.:"—*Held*, deceased had cut off a substantial part of the will, and had torn it sufficient to satisfy the stat. *Harris, In Goods of*, 33 L. J. Prob. 181; 11 L. T. N. S. 276. *Middleton, In Goods of*, 10 Jur. N. S. 1109; 34 L. J. Prob. 16. *Christmas v. Whinyates*, 3 S. & T. 81; 9 Jur. N. S. 283; 32 L. J. Prob. 73; 11 W. R. 371; 8 L. T. N. S. 801. The court, acting on the evidence of an expert in handwriting, to the effect that alterations and interlineations had been made at the same time that the will was written, decreed probate of will as altered. *In the Goods of Hindmarch*, 36 L. J. P. & M. 24.

[3] In order that a revoked will may be revived by a codicil since the Wills Act, an intention to revive it must appear from the contents of the codicil, and cannot be established by any act *dehors* the codicil. *Marsh v. Marsh*, 30 L. J. P. & M. 77. A codicil conditioned to take effect only upon an event which does not happen republishes a will, and is on that ground entitled to probate. *In the Goods of Da Silva*, 30 L. J. P. & M. 171; 2 S. & T. 315.

[4] A. duly executed a testamentary paper in the form of a letter, beginning "My dear E.," and containing full directions as to how she wished the property to be disposed of; and concluding with these words—"I trust that this will not involve you in much trouble:"—*Held*, a good appointing of E. as

VIII. Lapsed Devises or Bequests.[1]

IX. How Construed.

(A) *In General.*[2]

(B) *As to Realty.*[3]

executrix. *Manly, In Goods of*, 3 S. & T. 56. B., by will, left all his property to his three sons therein named, and appointed "A. as my executor, with any two of my sons:"—*Held*, the appointment of "any two of my sons" void for uncertainty. *Baylis, In Goods of*, 2 S. & T. 613. Testator having, by his will, appointed A. & B. executors, by a codicil he appointed his wife sole executrix:—*Held*, the appointment of the executors by the will was revoked. *In the Goods of Lowe*, 33 L. J. P. & M. 155; 3 S. & T. 478. Where an executor is appointed by a foreign will, the nature and extent of the office conferred by the appointment are regulated by the law of the testator's domicil, and not by English law, even as to property situate in England. *Laneuville v. Anderson*, 30 L. J. P. & M. 25; 2 S. & T. 24. The deceased left in her will "one sovereign to the executor and witness of my will for their trouble, to see that everything is divided justly:"—*Held*, deceased had failed to make an appointment of executors. *Woods, In Goods of*, 37 L. J. Prob. 23. See *Goodworth, In Goods of*, *ib.* 49.

[1] A power of charging the inheritance given under a will to a tenant for life who dies before the testator, cannot be exercised by such tenant for life under section 33 of the Wills Act. *Griggs v. Gibson; Maynard v. Gibson*, 37 L. J. P. & M. 458.

[2] In interpreting a will and codicil the general rule is, that the whole will takes effect so far as it is not inconsistent with the codicil. *Robertson v. Powell*, 2 H. & C. 762; 33 L. J. Ex. 34. The primary duty of a court of construction, in the interpretation of wills, is to give to each word employed, if it can with propriety receive it, the natural ordinary meaning which it has in the vocabulary of ordinary life, and not to give to words employed in that vocabulary an artificial, a secondary, and a technical meaning. *Young v. Robertson*, 4 Macq. H. L. 314. In construing a will, the court must be informed of the circumstances surrounding the testator when making his will, such as his family status and the nature of his property. Extraneous evidence of these matters is therefore admissible. *Webber v. Stanley*, 16 C. B. N. S. 698; 33 L. J. C. P. 217; 10 L. T. N. S. 417. In construing the autograph will of an illiterate man, the meaning of technical language may be disregarded, but no word which has a clear and definite operation can be struck out. *Hall v. Warren*, 9 H. L. Cas. 420. It is not correct in construing a will to consider what power would be, by a particular construction, given to a particular person, by the exercise of which he might be able to defeat what appears to be the general purpose of the will. *Atkinson v. Holtby*, 10 H. L. Cas. 313.

[3] When there is a devise of land to "A. B. and his children," and at the time of the devise he has no child, the word children is *primâ facie* a word of limitation, and the first taker shall have an estate tail; if he has children it is *primâ facie* a word of purchase, and gives a joint estate to him and his children as purchasers. But either of these constructions may be defeated by the plain intention of the testator, to be collected from the whole of the will. *Byng v. Byng*, 10 H. L. Cas. 171. Where a lord of a manor made his will before the 7 Wm. 4 & 1 Vic. c. 26, and devised a manor, and subsequently purchased freehold lands held of the manor:—*Held*, that the freeholds did not pass by the will. *Delacherois v. Delacherois*, 10 Jur. N. S. 886; 10 L. T. N. S. 884—H. L. A will contained the following devise, "I give and bequeath to my son Edward Fleming all that dwelling-house, &c., now in the occupation of my son John, during his natural life, and at his death to descend to my grandson Henry Fleming, and his heirs." The testator had two grandsons named Henry:—*Held*, an ambiguity to which of the two grandsons the testator meant to devise the house, and parol evidence was admissible to explain it. *Fleming v. Fleming*, 31 L. J. Ex. 419; 1 Hurls. & C. 242. A testatrix, being owner of two adjoining houses, occupied one herself, in the garden of which was a pump; the other was occupied by A. as her tenant from year to year, and he, with her knowledge, was accustomed to go into the garden and fetch water:—*Held*, that the right to the use of the pump did not pass by a devise of "the house to the occupation of A." *Polden v. Bastard*, 32 L. J. Q. B. 372; 8 L. T. N. S. 535; 11 W. R. 778. A testator being entitled in reversion to two undivided fourth-parts of three fields, by his will, prior to 1 Vic. c. 26, gave unto J. M. (without words of limitation) "all my undivided quarter of three fields in P.:"—*Held*, these words carried the fee. *Manning v. Taylor*, 1 L. R. Ex. 235; 35 L. J. 145. A testator gave and bequeathed to his well-beloved wife ——, all and singular his lands, &c., by her freely to be possessed and enjoyed . . . . *all my children to be educated and settled in business according to my wife's discretion:* —*Held*, the widow took a fee, the intention being collected from the passage in italics. *Lloyd v. Jackson*, 1 L. R. Q. B. 571; 35 L. J. 188. A testator, being a mortgagee in fee of land, devised to his wife and two of his friends,

(C) *As to Personalty.*[1]

X. Parol Evidence, when Admissible.[2]

XI. Proceedings connected with.[3]

all monies, debts on mortgage, and all other his estate, whatever nature or kind, to receive the rents, for the wife during her life; after her death sums due to him on mortgages, therein describing them as "mortgage debts:"—*Held*, that the legal estate in the lands of which the testator was mortgagee, passed in fee under the devise to the three trustees. *Rippen v. Priest*, 13 C. B. N. S. 308; 32 L. J. C. P. 65. A testator, named Henry T., devised his real estate to trustees to permit his son Henry to receive the rents during his life; and after his decease, the testator devised the property to the heirs of the body of his son Henry, and for want of such issue, to the testator's nephew Henry for life, and after his death to the testator's "right heirs of the name of H. T., if any such there should then be, for ever:"—*Held*, that the ultimate limitation was a contingent remainder which would vest in the person who at the time of the nephew's death filled the character of a right heir of the testator, and had the name of Henry Thorpe. *Thorpe v. Thorpe*, 1 H. & C. 326; 32 L. J. Ex. 79. A testator, entitled in fee to land, devised the same "unto my daughter M., wife of A. R., to her and her children for ever." M. had no child at the date of the will or at the death of the testator, but she was *enceinte* at both periods:—*Held*, that M. took an estate tail. *Roper v. Roper*, Ex. Ch. 3 L. R. C. P. 32; 37 L. J. 7.

[1] The word "survivor" in gifts of personal estate may be taken as referring to the period of distribution. It is not equally settled that with regard to real estate it applies to the determination of the prior limitation. *Taaffe v. Conmee*, 10 H. L. Cas. 64. When the word "survivor" is applied to a class of persons, and individuals of that class are named, its natural meaning is "longest liver" of those who are named. *Ib.* The benefit of survivorship may be given to those who have life interests as tenants in common. *Ib.* A will contained the following clause: "I give and bequeath to A. B. and C. all my personal effects, and everything of every kind that I have now, or may have at the time of my decease, in my apartments at 13 Plaistow Grove, or elsewhere:"—*Held*, that the residuary personal estate passed under the words "or elsewhere." *In the Goods of Scarborough*, 30 L. J. P. & M. 85.

[2] A duly executed codicil was pronounced against upon parol evidence that the testator did not intend that it should be operative. *Lister v. Smith*, 33 L. J. P. & M. 29; 3 S. & T. 282. When a will has been lost, and evidence of its contents is supplied by the production of a draft, and of the parol testimony of persons who had read the will, the parol evidence must be placed side by side with the draft, and out of them the court will extract the contents of the will to be proved. *Burls v. Burls*, 1 L. R. P. & D. 472. Where a testamentary paper duly executed refers to a written document which is to form part of the will, and described as then existing, in such terms that it is capable of being ascertained, parol evidence is admissible to ascertain it; but where it is not referred to as then existing, parol evidence cannot be admitted to ascertain the document. *In the Goods of Sunderland*, 1 L. R. P. & D. 198; 35 L. J. 82. Two wills, each containing a clause of revocation, one dated in 1855 and the other in 1858. Evidence was admitted to prove that 1855, though written at length, was written by mistake for 1865, and that the will dated 1855 was executed in 1865. *Reffell v. Reffell*, 1 L. R. P. & D. 139. Verbal declarations or written statements made preceding or accompanying acts done by a testator in relation to his will, are admissible in order to show the quality and nature of such acts. *Johnson v. Lyford*, 37 L. J. Prob. 65; 1 L. R. P. & D. 546; 18 L. T. N. S. 769; 16 W. R. 1130.

[3] A plea to a declaration propounding a will that the said will "was not the will of the deceased," is bad for ambiguity. *Owen v. Davis*, 33 L. J. P. & M. 201; S. & T. 588. Plea to a declaration propounding a codicil. that it was not prepared in conformity with the intention of the deceased, and that he, at the time of its execution, was ignorant of its contents, is a bad plea. *Cunliffe v. Cross*, 32 L. J. P. & M. 68; 3 S. & T. 37. In questions as to due execution, the presumption *omnia rite esse acta* applies with more or less force according to the circumstances of each case. *Vinnicombe v. Butler*, 34 L. J. P. & M. 18; 3 S. & T. 580. The declarations of a testator made after the execution of a will are not admissible as evidence of its contents. *Quick v. Quick*, 33 L. J. P. & M. 146; 3 S. & T. 442. The certificate of a foreign ambassador under the seal of the Legation is sufficient evidence of the law of the country by which he is accredited. *In the Goods of Klingemann*, 32 L. J. P. & M. 16; 3 S. & T. 18. The copy of a foreign will contained in the ancillary probate granted in this country to the foreign executors, is the only admissible evidence of the will. *Enohin v. Wylie*, 10 H. L. Cas. 1. A party proving a will in solemn form is bound to call at least one of the attesting witnesses, if such evidence can be obtained. *Bowman v. Hodgson*, 36 L. J. M. P. 124. The application of the rule, that an instrument more than thirty years old produced from the proper custody is admissible without further proof, is not

WINDING-UP. 6 Abr. 667. *See ante*, Joint-Stock Companies, p. 270.

WITNESS. 6 Abr. 667. *See ante*, Arrest; Deposition; Interrogatories; Statutes as to Interrogatories, 1 W. 4, c. 22; *ib.* c. 121; out of Jurisdiction, 17 & 18 Vic. c. 74. Expenses of in criminal cases, 7 Geo. 4, c. 64.

I. Competency of, p. 442.
II. Examination of and Declaration by, in lieu of Oath, p. 442.
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V. Compelling Attendance, and Expenses of, p. 443.
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I. Competency of.[1]

II. Examination of and Declaration by, in lieu of Oath.[2]

III. Impeaching and supporting Credit of.[3]

IV. Refreshing Memory of.[4]

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affected by circumstances which may lead to an inference that the instrument had been cancelled; the only question being whether the custody of the instrument is proper. *Andrews v. Motley*, 32 L. J. C. P. 128.

[1] The evidence of an incompetent witness may be withdrawn from the jury upon the incompetency appearing, although he has been examined on the *voir dire*, and pronounced competent. *Reg. v. Whitehead*, 1 L. R. C. C. 33; 35 L. J. M. C. 186; 14 L. T. N. S. 489. A wife is not a competent witness against her husband, charged under the Vagrant Act, 5 Geo. 4, c. 83, s. 3, with neglecting to maintain her. *Reeve v. Wood*, 5 B. & S. 364; 11 Jur. N. S. 201. By the 32 & 33 Vic. c. 68, s. 2, in actions of breach of promise of marriage the parties are competent to give evidence, but not to recover a verdict unless the testimony be corroborated by some material evidence. By sect. 3, in suits for adultery husbands and wives are competent to give evidence.

[2] A witness allowed to be examined adversely on evidence given by him in the Bankruptcy Court. *Pound v. Wilson*, 4 F. & F. 301. The question being whether a paper was in the handwriting of a defendant, and having been got to write something on a paper, this was allowed to be shown to the jury, for the purpose of comparison of handwriting. *Cobbett v. Kilminster*, 4 F. & F. 490. An executor, having produced one of the attesting witnesses to the will, who failed, from mental incapacity, to give a rational account of the time and manner of execution, called the second witness. He deposed that the testator did not sign his name or acknowledge his signature in the presence of two witnesses present at the time:—*Held*, that though he could not be considered hostile, yet, as he was produced to satisfy the requirements of the law, the party producing him might question other witnesses to throw doubts upon his general credibility. *Coles v. Coles*, 35 L.J P. & M. 40. By 32 & 33 Vic. c. 68, s. 4, if any person called to give evidence in a criminal or civil proceeding object to take an oath, or shall be objected to as incompetent to take an oath, if the judge is satisfied, the witness may make a declaration and be triable for perjury.

[3] In order to impeach the credit of witnesses for the prosecution, the prisoner may call witnesses to prove that from their general reputation they would not believe them upon their oaths. *R. v. Brown*, 36 L. J. M. C. 59; 1 L. R. C. C. 70. In an action for collision, a statement made by the captain before a receiver of wreck, under the 448th section of the 17 & 18 Vic. c. 104, is inadmissible. *Northard v. Pepper*, 17 C. B. N. S. 39; 10 L. T. N. S. 782. Even if a judge wrongly allows questions in cross-examination to be put and to be answered, the court will not on that ground grant a new trial, unless it could see that injustice had been done by such ruling. *Henman v. Lester*, 12 C. B. N. S. 776. As a rule, upon a question put collaterally to the issue, the party questioning is bound by the answer. *Ib.* Under sect. 23 of the 17 & 18 Vic. c. 125, it is not competent to a party to prove that his own witness has formerly made a statement inconsistent with his present testimony. *Ryberg v. Ryberg and Smith*, 32 L. J. Mat. Cas. 112.

[4] A witness may refresh his memory as to the day on which proceedings at which he was present took place, by referring to a newspaper containing a report of those proceedings, and which he read at the time the facts were fresh in his recollection, and then knew that they were correctly reported. *Dyer v. Best*, 4 H. & C. 189.

V. Compelling Attendance, and Expenses of.[1]

VI. Commission to examine, and Examination on.[2]

WORK and Labour.[3] 6 Abr. 679. *See ante*, Frauds, Statute of; Lien; Master and Servant; Salvage.

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[1] A subpœna duces must distinctly specify what is required to be produced. A general production cannot be enforced. *Lee v. Angas*, 35 L. J. Ch. 373; 14 L. T. N. S. 324. The affidavit in support of an application for a subpœna to procure the attendance of a witness residing in Scotland should state what the witness is required to prove. It is not sufficient to state that the application was made by the advice of counsel. *Allen v. Duke of Hamilton*, 2 L. R. C. P. 630. The 17 & 18 Vic. c. 34 is not available to compel the attendance of a person in Ireland as a witness before one of the Masters upon a compulsory reference under the Procedure Act, 1854. *O'Flanagan v. Geoghegan*, 16 Com. B. Rep. N. S. 636. A party to a cause, about to attend it on his own account, has no right to conduct-money or expenses when subpœnaed by the other side. *Reed v. Fairless*, 3 F. & F. 958. The expenses of detaining a witness will not be allowed unless shown that his detention was necessary to ensure his attendance to *give evidence*, and not for any other purpose. *Bahia, The*, 11 Jur. N. S. 1008—Adm. A plaintiff had subpœnaed the defendant, who, on being called for the plaintiff, refused to give evidence until his expenses were paid. The judge examined him on the *voir dire*, when, it appearing that he had been subpœnaed while on his way to attend the trial, and had not been brought to the assizes solely by the subpœna, his objection was overruled, and he was sworn and examined. *Reed v. Fairless*, 8 L. T. N. S. 853. It is in the discretion of the Master whether he will allow costs of professional assistance in examining witnesses under a commission. *Potter v. Rouker*, 3 L. J. N. 260.

[2] An order for the examination of witnesses under the 1 Will. 4, c. 22, may be obtained before issue joined. *Fischer v. Hahn*, 13 C. C. N. S. 659; 32 L. J. C. P. 209. A commission to examine witnesses abroad, directed to the judges of a foreign court, but one of them being objected to, his name was omitted from the commission, and the court was requested not to allow him to take part in the examination. *Valentin v. Hall*, Q. B. 35 L. J. 121. The costs of taking the evidence of a witness under the 1 Will. 4, c. 22, s. 4, cannot be allowed to the party taking it as costs in the cause, unless the deposition has been used at the trial by the party taking it. *Ridley v. Sutton*, 1 H. & C. 741; 32 L. J., Ex. 122. If a witness is so infirm that it is a prudent course to take his examination under the statute, but he is afterwards able to attend the trial, the costs of the commission and the costs of the witness's attendance at the trial allowed. *Beaufort* (*Duke*) *v. Ashburnham* (*Earl*), 13 C. B. N. S. 598; 32 L. J. C. P. 97. In an action of slander, the defendant having obtained an order for the examination of two witnesses in Australia, the motion to rescind the law imposed as a term that the defendant should state what he expected the witnesses to prove. *Barry v. Barclay*, 15 C. B. N. S. 849. The court will not usually give the succesful party the costs of counsel attending a commission to examine witnesses abroad, even though the opposite side employed counsel, unless there was something special in the case. *Lecocq v. South-Eastern Railway Company*, 14 W. R. 649. Where proceedings are taken to enforce the examination of witnesses out of the jurisdiction under a commission, it is for the court in which such proceedings are taken to decide what persons are to be examined, what questions the witnesses are bound to answer, and what documents are to be produced on the examination. *Campbell v. The Attorney-General*, 3 L. R. C. 10; 36 L. J. 600. Too late to object at the trial to a commission to examine witness that defendant's name was not specified. *Hodges v. Cobb*, 36 L. J. Q. B. 265.

[3] Incapacity, by reason of the intervention of an act of God, to perform personal service, is an excuse for its non-performance, notwithstanding a covenant to serve absolute and unconditional in its terms. *Boast v. Firth*, 4 L. R. C. P. 1; 38 L. J. C. P. 1. Where a person has, by fraud, induced another to perform a service for him, intending not to pay for the performance of it, still there is a liability implied by the law which may be enforced in the same way as an obligation arising out of an express contract. *Rumsey v. North-Eastern Railway Company*, 32 L. J. C. P. 244. The language of a contract, where it admits of it, must receive such a construction as is consistent with reason and justice; but where it appears, from the tenor of the agreement, that the parties intended, the one to insist upon, and the other to submit to, conditions, however unreasonable and oppressive, the court may give effect to them. *Stadhard* or *Stannard v. Lee*, 3 B. & S. 364; 32 L. J. Q. B. 75; 7 L. T. N. S. 850. A public company employed a broker to dispose of their shares, on the terms that he should be paid 100*l.* down and 400*l.* in addition, upon the allotment of the whole of the shares of the company. The broker disposed of a considerable number of shares when the company was wound up:—*Held*, that he was prevented earning the 400*l.* by the act of the company, and entitled to recover a proportion of the 400*l.* *Inchbald v. Western Neilgherry Company*, 34 L. J. C. P.

WRIT. 6 Abr. 681. *See* Particular Titles.

I. Writ of Summons.

(A) *Jurisdiction of Court*, p. 445.

(B) *Renewal of*, p. 445.

(C) *Service of, Abroad and in this Country*, p. 445.

(D) *Dispensing with and evading Service*, p. 445.

(E) *Indorsement on*, p. 446.

II. Writ of Trial.

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15. A. contracts with B. that B. shall, within a certain time, build A. a ship, complete and ready for sea; and that the price in the contract mentioned should be inclusive of all charges for the ship, finished and fitted perfectly in every respect; and that no charges should be demanded for extras, but any additions which might be made by order in writing of A.'s agent should be paid for at a price previously agreed upon in writing:—*Held*, that B. could not recover for extras, alterations, or additions made during the course of the performance of the contract, unless where he had received previous written orders, agreeably to the contract. *Russell v. Sa Da Bandeira* (*Viscount*), 13 C. B. N. S. 149; 32 L. J. C. P. 68; 7 L. T. N. S. 804. A clause respecting penalties, in the contract, imposed a penalty of 5*l.* a-day on B. for every day after a certain day, if the ship should not then be delivered. The ship was not delivered till long after the day appointed, but a large portion of the delay arose from the interference of A. or his agent:—*Held*, that no sum in the nature of a penalty was recoverable by A. *Ib.* In a contract for building steamers (to the satisfaction of the engineer), to be completed within six months, with penalties for delay, it was provided that the engineer might allow an extension of time, and might also order additions or alterations by orders in writing, and that the value of such additions or alterations should be "ascertained," and added to or deducted from the contract price, as the case might be. In an action for extras, the value of which had not been ascertained by the engineer or any third party, the employer pleaded a set-off for penalties for delay, and the contractor replied that the additions ordered made it impossible to complete the vessels in time:—*Held*, first, that the action was not maintainable until the value of the additions had been ascertained. *Westwood v. Secretary for India*, 11 W. R. 261; 7 L. T. N. S. 736; and that the set-off for penalties could not be sustained, assuming the fact to be as stated in the replication. *Ib.* A defendant engaged the plaintiffs to build a house, and the conditions stipulated that no extras or omissions should be made without the written authority of an architect, and that they should be priced at the contract prices; that no claim should be made for extra or additional work without the production of the written order of the architect, signed when the instructions for them were given, that certain proportionate payments should be made from time to time, on the certificate of the architect that the sum claimed was a proper one, the architect's opinion to be final as to the value; that if any dispute should arise as to the meaning of the specifications or contract, the architect was to define the meaning, and that his decision as to the nature, quality, and quantity of the works executed or to be executed should be final:—*Held*, that neither party could raise a question whether or not the work separately ordered came within the meaning of the contract, and that the architect's decision was final. *Goodyear v. Weymouth and Melcombe Regis* (*Mayor, &c.*), 1 H. & R. 67; 35 L. J. C. P. 12. A contract to make a set of artificial teeth to fit the mouth of the employer is a contract for the sale of a chattel, and therefore within the 17th section of the Statute of Frauds (29 Car. 2, c. 3); and a count for work, labour, and materials, is not sustainable. *Lee v. Griffin*, 30 L. J. Q. B. 252; 1 B. & S. 272. The plaintiffs contracted with the defendant to erect certain machinery; when the machinery was only partly erected, a fire broke out in the buildings, and destroyed both the buildings and the machinery:—*Held*, that the plaintiffs were entitled to recover from the defendant the price of that portion of the machinery which had been so erected and destroyed. *Appleby v. Meyers*, 1 L. R. C. P. 615; 35 L. J. C. P. 295; 14 L. T. N. S. 549. A building contract contained a clause for payment of the price of the building by instalments, with a proviso that before each payment the architect should certify that the works were carried out to his satisfaction:—*Held*, that the certificate need not be in writing. *Roberts v. Watkins*, 14 C. B. N. S. 592; 32 L. J. C. P. 291; 11 W. R. 783; 8 L. T. 460. Where a sum of money is agreed to be paid for work and materials upon the certificate of a third person, if such third person, in collusion with and by the procurement of the person who has agreed to pay, improperly neglects to certify, an action may be maintained against the latter for the agreed sum, though the certificate was made a condition precedent to the payment of the money. *Batterbury v. Vyse*, 2 H. & C. 42; 32 L. J. Ex. 177; 8 L. T. N. S. 283.

(A) *Jurisdiction of Court.*[1]

(B) *Renewal of.*[2]

(C) *Service of, Abroad and in this Country.*[3]

(D) *Dispensing with and evading Service.*[4]

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[1] The fact that a person holds himself out, on a card published by himself, as carrying on business at 38 W. street, is *primâ facie* evidence that he is resident there, and gives jurisdiction to the courts at Westminster to issue a writ of summons against him. *Naef v. Mutter*, 12 C. B. N. S. 816; 9 Jur. N. S. 384. The court, not being satisfied that plaintiff did not intend to sue for matters not arising within the jurisdiction, made an order to set aside the writ, unless he would give an undertaking to prove a cause of action within the jurisdiction, and to confine himself to that cause of action. *Diamond v. Sutton*, 1 L. R. Ex. 130; 35 L. J. Ex. 129. To entitle a plaintiff to proceed in his action against a foreigner resident abroad for breach of contract, the *whole* cause of action must have arisen within the jurisdiction. *Allhusen v. Malgarejo*, 3 L. R. Q. B. 340; 18 L. T. 323; 37 L. J. 169. The defendant, a merchant residing in Norway, and not being a British subject, drew, indorsed, and sent in a letter by post to a merchant in London, a bill of exchange payable in London, and which was indorsed to the plaintiff and dishonoured:—*Held*, that there was no cause of action which arose within the jurisdiction of the superior courts, nor the breach of a contract made within their jurisdiction, and the plaintiff could not proceed against the defendant under sect. 19 of the 15 & 16 Vic. c. 76. *Sichel v. Borch*, 2 H. & C. 954; 9 L. T. N. S. 657. Action for breach of a contract made by a plaintiff, who resided in England, with the defendant, who resided at Graham's Town:—*Held*, the cause of action arose within the jurisdiction of 15 & 16 Vic. c. 76, s. 18. *Horwood v. Wood*, 17 C. B. 749; 11 L. T. N. S. 383—C. P. An Irish judgment for a debt contracted in England does not constitute a cause of action within the jurisdiction of the superior courts here; nor does its remaining unsatisfied, the debtor being in this country, constitute a breach of a contract made within the jurisdiction. *Thelwall v. Yelverton*, 16 C. B. N. S. 813.

[2] The six months during which a writ of summons continues in force, after its renewal, are to be computed inclusive of the day of renewal. *Anon.*, 1 H. & C. 664; 32 L. J. Ex. 88; 11 W. R. 293; 7 L. T. N. S. 718. The last day for resealing the writ, so as to save the Statute of Limitations, expired on Saturday the 28th December, within the Christmas holidays. A party who attended at the office on that day for the purpose found it shut; and the officer having refused to reseal it on the following Monday, the court refused to order him to do it *nunc pro tunc*. *Evans v. Jones*, 2 B. & S. 45. *Nazas v. Wade*, 31 L. J. Q. B. 5.

[3] A writ of summons having been served on a foreign resident out of the jurisdiction, with a notice indorsed allowing but seven days for the payment, the time limited for appearance being fourteen days:—*Held*, the irregularity not waived by a subsequent admission of service and offer to settle. *Galt v. Mongruel*, 1 L. R. C. P. 46; 35 L. J. C. P. 88. *Horwood v. Wood*, 17 C. B. N. S. 749. Where a defendant has left the country, and has not since been heard of, proof that a copy of a rule has been left at his place of residence is sufficient service to entitle the plaintiff to issue execution against his goods. *Styrling v. Lloyd*, 9 L. T. N. S. 730—B. C. A., having been served with a writ of summons, under the Bills of Exchange Act, by mistake for B., told the process server it was a mistake, but took no further notice. He was arrested on a *ca. sa.*, and paid the money to get out. On motion to set aside the judgment, the court *held*, that the proper course was to appear and defend the action, or apply at once at chambers to set aside the writ, and refused the application. *Meggitt v. Shustee*, 7 L. T. N. S. 680—C. P. See *Kelly v. Lawrence*, 12 W. R. 413—Exch. Cham. An action may proceed against a lunatic on the writ of summons coming to his knowledge. *Kimberlay v. Alleyne*, 9 Jur. N. S. 650; 8 L. T. N. S. 398—Ex. 2 H. & C. 223.

[4] The court will not interfere with the discretion of a judge in refusing to make an order to proceed as if personal service had been effected, because he was not satisfied that there had been sufficient reasonable efforts to effect service. *Tomlinson v. Goatley*, 1 L. R. C. P. 230; 35 L. J. C. P. 183. Where a British subject having a warehouse in London resides out of the jurisdiction of the superior courts, efforts to serve him with a writ at his warehouse, when he is in fact abroad, are not such "reasonable efforts to effect personal service" as to justify an order, under the 15 & 16 Vic. c. 76, s. 17, that the plaintiff proceed as if personal service had been effected. *Flower v. Allan*, 2 H. & C. 688; 33 L. J. Ex. 83. The exception of Scotland and Ireland in the 18th section does not, by implication, authorise proceedings against a person resident in those countries under the 2nd or 17th sections. *Ib.* A plaintiff, having endeavoured for two years to serve a defendant personally with a writ, at length succeeded in doing so in the streets of Paris. On an application to proceed without service of the declaration,—*Held*, that he must make reasonable efforts to serve the declaration. *Thelwall v. Yelverton*, 16 C. B. N. S. 813; 10 Jur. N. S. 295. *Bates v. Bates*, 30 L. J. C. P. 191. The de-

(E) *Indorsement on Summons.*[1]

II. Writ of Trial.[2]

WRONGFUL DISMISSAL. 6 Abr. 687. *See ante*, Master and Servant.

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fendant has the whole of the last day to appear under judge's order to proceed without personal service. *Weeks v. Wray*, 3 L. R. Q. B. 212: 37 L. J. 84; 17 L. T. 498.

[1] A process server is not liable to an action for a breach of duty in neglecting to ipdorse on a writ of summons the time of service. *Curlewis v. Broad*, 1 H. & C. 322.

[2] The 17th sec. 3 & 4 Wm. 4, authorizing the trials of issues before a sheriff or a judge of an inferior court of record, where the sum sought to be recovered does not exceed 20*l.*, is repealed by s. 6, 30 & 31 Vic. c. 142. Where in an action of contract a plaintiff did not claim more than 20*l.*, and the cause was sent to be tried before the sheriff, the defendant, if he succeeds, was held only entitled to have his costs taxed on the lower scale. *Copley v. Hemingway*, 15 C. B. N. S. 447; 33 L. J. C. P. 152. *See* C C. Rules 131, Davis's County Courts Acts, 1867, pp. 4–31.

A CONDENSED ALPHABETICAL SYNOPSIS

OF

THE BANKRUPTCY ACT, THE DEBTORS' ACT, THE BANKRUPTCY REPEAL AND INSOLVENT DEBTORS' ACT, 1869,

AND GENERAL RULES FOR REGULATING THE PRACTICE AND PROCEDURE IN BANKRUPTCY,

AND UNDER THE OTHER ACTS OF 1869.

Abbreviations and References.

Bankrupt Act, 1869, referred to by Sections only.

Debtors' Act, 1869, referred to as "Debtors' Act."

Bankruptcy Repeal and Insolvent Court Act, referred to as B. R. A.

General Rules for regulating Practice and Procedure in Bankruptcy, and forms referred to as G. R. B. and G. R. B. F.

Rules and Forms for regulating Proceedings in County Courts under Debtors' Act, 1869, referred to as R. & F. C. C.

General Rules under Debtors' Act, 1869, referred to as R. "Debtors' Act."

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